

A FIRST COURSE OF POLITICAL SCIENCE

with

New Constitutions of Indian Union and Pakistan

By

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TO MY BELOVED FATHER

PREFACE

This short treatise is intended for the beginners. It deals with the abstract theories of Political Science in a lucid manner and contains an exhaustive discussion of the political organisations of the principal States. The book has been written with a view to meeting the requirements of the students of Indian Universities. Although it covers the Pass Syllabus of the Calcutta University, the Honours students may use it with profit at the earlier stages of their study. In this small compass the author has tried his best to incorporate up-to-date information and to record important changes that have taken place in the constitutions of different States since 1920. To enhance the usefulness of the book University Questions of the last 23 years have been added at the end of each chapter and sections containing the Answers have been referred to.

The author is chiefly indebted to the valuable books of Dr. Garner, Dicey, Gilchrist and other eminent writers, which he has freely consulted in writing this book.

Beliachandi, }
13th July, 1932. }

Author

PREFACE TO THE EIGHTH EDITION

The call for a new edition of this book has given the author an opportunity of incorporating all recent contributions to Political Thoughts and to record all epoch-making changes in the constitutions of different countries. The last Great War witnessed the flight of Nazism from Germany and Fascism from Italy. These two countries are now under the complete control of the allied powers and have lost their sovereignty. India has been given Dominion Status in recognition of the valuable services rendered by her during the Last Great War and her right to frame her own constitution has been fully recognized. The British Parliament has passed the Indian Independence Act which has ushered in a new era of complete independence in India. The New Constitution of Independent India is now in the anvil and the draft constitution has already been published. This treatise has carefully recorded all these constitutional changes. The Organisation of the United Nations has found its due place in the appendix. The author will deem his efforts amply rewarded if this edition is favoured with cordial reception.

Ballygunge Park, }
June, 1948. }

Author

PREFACE TO THE NINTH EDITION

The cordial reception which this treatise has found in this year has necessitated the publication of this new Edition which incorporates all new theories in the domain of Political Philosophy and all new achievements in the sphere of administration of India and other independent States. A new chapter has been devoted to the discussion of Pakistan constitution. The new constitution of Burma has been given in Appendix H. The questions of different Universities have been added at the end of each chapter and the sections containing the answers have been referred to. The old order has been retained.

50P, Garcha Road, }
15th Nov. 1949. }

Author

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A FIRST COURSE OF POLITICAL SCIENCE

CHAPTER I

INTRODUCTION

Sec. 1. What should be the Proper Name of the Science ?

Writers have suggested various names for the Science of Government but scarcely any one of such names is sufficiently wide to include all the topics that are dealt with in the science.

Some ancient writers have used the term 'Politics' as a proper designation for the science of government. The science again, has been subdivided by Frederick Pollock and others into two well-marked parts viz. (i) the Theoretical Politics; and (ii) Applied Politics ; the former deals with the fundamental characteristics of the State without any reference to the actual affairs of the government while the latter contains a discussion of the actual working of the government. The use of the term 'Politics' has been open to objection on the ground that the term is commonly used to mean the current problems of the government.

Another term that has been used to designate the science is Political Philosophy. This term can be employed with profit to designate only that part of the science which is concerned with the various theories of State and Government but is defective inasmuch as it is too narrow to include the whole field covered by this science.

Another term that has often been suggested is 'Political science'. The term has been used by eminent writers to describe the mass of knowledge derived from the systematic study of the State.

The use of this term has been open to objection on this principal ground that there is no such single science which deals with the State in its entirety but there are distinct sciences each dealing with one particular aspect of the State. There are various phenomena of the State each of which can be the subject matter of a separate science. Each of these sciences is a political science. In this way Political Economy, Sociology, Public Finance may be denominated 'political sciences'. The term 'Political Science' is to be distinguished from Political Philosophy. The former supplies us with the results of the study of particular political institutions while the latter takes into consideration the fundamental principles that underlie them. The distinction, however, is very fine and is to be observed only in the writings of scientific writers.

Objections
against the
use of the term
'Political
Science'.

Sec. 2. The Definition and Scope.

Bluntschli defines Political Science as "the science which is concerned with the State, which endeavours to understand and comprehend the State in its fundamental conditions, in its essential nature, its various forms of manifestation, its development". The Political Science according to the above definition, includes every topic that may possibly arise in connection with the State which is the highest form of social organisation. In it we are concerned with the nature and origin of the State and the various forms in which the State manifests itself and lastly with the ends for which the State continues its existence. The scope of the science, therefore, will comprise a discussion of the characteristics of the State and the various theories of the origin of the State. It also deals with the various forms of government because government is nothing but the machinery or organisation through which the State realises its own ends. The science also deals with the various opinions about the ends of the State. Finally, it gives us an account of the nature and character of the State and the development that the State has attained. It is thus a historical investigation of what the State has been, an analytical study of what the State is and a politico-ethical discussion of what the State should be. The investigation, again, must be of a dynamic character and cannot end with a mere enumeration of the existing forms of political organisation. It must proceed further to note carefully the substantial changes which the dynamic society in which men live is constantly bringing about. The Political Science must therefore be a living science which will never reach its final conclusions. Prof. Garner discusses the scope of Political Science thus :—"The fundamental

Bluntschli's
definition of
'Political
Science.'

Political
Science deals
with every
topic concern-
ing the State.

problems of the science include, first an investigation of the nature of the State as the highest political agency for the realisation of the common ends of society and the formulation of the fundamental principles of State-life; secondly, an inquiry into the nature, history and forms of political institutions; and thirdly, a deduction therefrom, so far as possible, of the laws of political growth and development".

Dr. Garner's statement.

Sec. 2(a). Is Political Science a Science ?

The question with which we are concerned in this section relates to the claim of Political Science to be designated as a science.

Views whether political science is a science.

Opinions are divided on this point. Buckle remarks that "in the present state of knowledge, politics so far from being a science is one of the most backward of all arts". Comte also holds the same view and cannot tolerate that Politics should be ranked as a Science.

He advances the following arguments in support of his view :—

- (1) The writers of the Science do not agree as to the methods to be applied and the principles and the conclusions to be drawn.
- (2) The Science does not furnish the elements for making correct forecasts about the future.
- (3) It does not exhibit continuity in growth.

Buckle's and Comte's remarks.

With the development of political thought there has been a change in the angle of vision and the modern thinkers have now agreed that the phenomena of the State admit of scientific treatment and that the laws and principles deduced from them can be profitably applied to the solution of practical problems of the State. The investigations are now carried on in accordance with certain well-recognised rules and their conclusions are for that reason more accurate. Nevertheless Political Science cannot claim the degree of perfection attained by the physical sciences, like Physics and Chemistry. This is because the social phenomena with which Political Science has to deal are highly complex and variable, influenced as they are by the actions and emotions of mankind. Political Science is thus an imperfect science and shares with other social sciences the difficulties of scientific investigation. No particular law or theory formulated by the science can hold good for all time under all circumstances. Thus the principle of democracy which once commanded universal support has in recent times been vehemently opposed in totalitarian states. The theories and laws enunciated by the science hold good so long as

Politics—an imperfect Science.

the circumstances do not change. Political Science is a science and an art at the same time. It furnishes some sort of practical training to the citizens and trains politicians in the art of statesmanship.

Sec. 3. Methods of the Study of Political Science.

In this section we shall have a brief review of the various methods which have been applied in the study of political phenomena with a view to determining laws and principles of the Political Science. These methods include the following methods enumerated below :—

(1) *Philosophical or Deductive method* :—The truly philosophical method of which the exponents are Bluntschli, Rousseau, Mill, Sidgwick and others, starts from some original knowledge of human mind and from the knowledge proceeds to draw conclusion as to the nature of the State, its function and its end. It then attempts to substantiate the conclusions so derived with reference to actual facts of history. It does not mean an abstract speculation but combines ideas with facts. A judicious adoption of this method of study is no doubt useful but often we find that imagination of man formulates theories which have little or no reference to historical facts. This perversion of the truly philosophical method is known as Ideology and the evil that follows from such method has been indicated by the French and Russian Revolutions.

(2) *The Historical method* :—This method attempts to study political institutions with reference to their origin, their growth and development. The history supplies us with facts concerning the political institutions and enables us to deduce morals and generalisations from them. The experience as gathered from the study of history will render great assistance in determining the steps that should be taken in future under certain circumstances. This method has been highly spoken of by Seeley and Freeman. The philosophical political scientists like Sidgwick are not ready to give this method the pre-eminent position for two reasons. First, the primary aim of Political Science which consists in determining what ought to be the constitution and action of government cannot be discovered by a historical study of the forms and functions of Government. Secondly, history supplies us with materials but does not help us in determining the badness and goodness of political institutions. These writers, however do not ignore the importance of the histo-

rical method but admit that by means of it we can ascertain the laws of political evolution and thus forecast, though dimly, the future.

Like the philosophical method the historical method should be adopted with care and caution. We should take action on the basis of our historical experience but we should take care to see whether the circumstances under which actions are taken are the same or not. If the greatest caution is not taken in the application of this method it will degenerate into "mere empiricism" which means too great adherence to historical facts without taking into consideration their causes and effects.

Care and caution in the application of this method.

(3) *Comparative method* :—This method which was applied in the past by Aristotle and Montesquieu enables us to determine common causes and consequences by making a comparative study of the existing political institutions and those which existed in the past. The same political events may take place under different political conditions; it is by means of comparison that we can determine the common cause of such political events. The comparative method may assume some other forms viz., (1) the method of single agreement, (2) the method of agreement and difference, (3) the method of residues, and (4) the method of con-comitant variation.

It aims at determining the common causes of such political events.

This method is to be used with care. While comparing political institutions with a view to finding out general principle underlying them, efforts should be made to take into consideration the effect of difference of social, political, economical and moral conditions.

(4) *Experimental method* :—The experimental method does not play the same important part in the methodology of political science as it does in the physical sciences. In social sciences we cannot alter the circumstances so as to arrive at an abstract truth. It is not possible for us to select a particular community and to introduce democracy or socialism there in order to see the respective effects of democracy or socialism.

Difficulties in the matter of application of this method.

(5) *Analogy* :—Analogy is another important method which may help the students greatly in the study of Political Science; but it is very difficult to apply this method in Political Science because of the various circumstances by which a particular event may be surrounded. Again, analogy does not help us to prove a thing definitely. It indicates probability and not the certainty.

Analogy.

- (6) *The Right method* :—We have already dealt with the two important methods viz., (1) the philosophical and (2) the historical. The right method that is applicable in Political Science is a combination of these two methods. We should never think that these two methods are in conflict with each other; on the other hand, they supplement and correct each other. The philosophers must proceed with historical facts and the historians cannot ignore the utility of philosophy.

The right method is a combination of the philosophical and the historical methods.

✓Sec. 4. Political Science : Its Relation to other Sciences.

Politics and Sociology.

The Political science has relation to other sciences which deal with human activity. It is so intimately connected with Sociology that it is difficult to define exactly their respective spheres.

- (1) Sociology, however, has a wider scope. It is concerned with the study of society viewed as an aggregate of individuals, while Political Science has a much narrower scope inasmuch as it deals with only a particular aspect viz., the political aspect of society.

They are intimately connected; but there are points of difference too.

Political Science and History.

✓(2) *Political Science and History* :—The intimate connection that Political Science happens to have with history has been aptly stated by Sir John Seeley in the following manner :—

They are inter-connected.

"History without Political Science has no fruit. Political Science without History has no root."

Political Science is founded upon historical facts. If we are to understand the development of political institutions we should study them historically. Political Science, however, is not concerned with any and every type of history. All history is not past politics nor all politics is present history. Political Science concerns itself with the political history or history of the growth of political institution. Province of history, however, is distinct from that of Political Science. The function of history is to narrate and interpret a succession of events and while fulfilling its function it records the changes in political institutions. The Political Science starts with these historical data concerning the political institution and attempts to explain them and to extract from them permanent principles of political life. Unlike history it takes an ethical view of things and deals with the State as it ought to be.

Political Science is concerned with the political history and explains political events.

The records of past States are valuable inasmuch as they throw light upon the vexed questions of the best form of government under given conditions. Hence it has been aptly said that history gives us, as it were, "the third dimension to Political Science." Again, the study of history will be incomplete unless the political aspects of the historical facts have been thoroughly grasped.

(3) *Political Science and Ethics* :—Political Science deals with the State. The ideal State or political organisation must be based upon high standard of morality. Political Science while dealing with State in its ideal form has to refer to the moral ideals. The political ideal cannot be absolutely separated from ethical ideal. Laws should be formulated with a view to strengthening the moral ideas of the people. The actions of the government are to be justified on ethical ground and every action that violates the principle of morality is to be condemned. Thus we see that moral ideals always precede political ideals.

The political
ideals refer to
moral ideals.

(4) *Political Science and Political Economy* :—The ancient writers regarded Political Economy as a branch of the Political Science. The modern writers, however, strictly define the scope of Political Economy and distinguish it from that of Political Science. The Political Economy deals with human wealth and includes a discussion of the consumption, production, distribution and exchange of wealth, while Political Science embodies a discussion of the State. But in spite of this demarcation of respective spheres, the Political Science cannot deal with its subject matter without referring to economic consideration. Again, the economic condition of a country influences the form of government in the same way as political organisation influences the economic life of a nation. All these facts go to show the nature and character of relationship that subsists between Political Economy and Political Science.

Political
Science and
Political
Economy.

Close connec-
tion between
the two
Sciences.

(5) *Political Science and Jurisprudence* :—Jurisprudence is the formal science of positive law and has thus to deal with one particular department of the Political Science. Political Science in its attempt to deal with the state cannot dispense with the discussion of the nature and origin of law and of the machinery by which it is promulgated and enforced. Jurisprudence deals more particularly with this topic of Political Science. It may thus be regarded as a sub-division of the Political Science.

(6) *Political Science and International Law* :—International Law is a law regulating the relation of states with one another. Political Science deals with State and contains a brief outline of

international law. In this sense international law may be regarded a sub-division of Political Science.

(7) *Political Science and Social Psychology* :—Political Science bears an intimate relation with social psychology which studies the behaviour of human beings in their social relationships. Political Science which has to deal with political relationships of human beings cannot ignore these social relationships.

Questions and Answers

Q. 1. Discuss the relation of Political Science with History, Sociology, Political Economy and International Law (Patna, 1932).

Ans. See Sec. 4.

Q. 2. 'History without Political Science has no fruit; and Political Science without History has no root'. Discuss this statement. (C. U. 1933).

Ans. See Sec. 4.

Q. 3. Define the nature and scope of Political Science. How is it related to Ethics, Economics and Sociology. (Punj. 1937; Bom. 1936, '37).

Ans. See Sec. 4.

Q. 4. What is the relation of Political Science with History, Economics and Ethics. (Bom. 1941; Dacca, 1935).

Ans. See Sec. 4.

Q. 5. What do you understand by the term 'Historical Method'. State briefly the chief contributions of at least one writer of the Historical School. (All. U. 1934).

Ans. See Sec. 4.

Q. 6. How is Political Science related to History? (Punj., 1941, '38; Dacca, 1935; Ag., 1939).

Ans. See Sec. 4.

Q. 7. Define 'Political Science' and distinguish it from 'Politics' and 'Political Philosophy'. Is Political Science really a science? (Punjab, 1937).

Ans. See Secs. 1, 2, and 2(a).

CHAPTER II

✓ NATURE OF THE STATE

Sec. 1. Definition of State.

The Political Science deals with State. In this section we are concerned with the definition of State. The necessity of a strict and accurate definition of the term is keenly felt, because the various senses in which the term is used ordinarily by the people may bring confusion among students. Sometimes the term is used in the sense of government as when we speak of State railways. Again, it is used roughly to denote countries which cannot, scientifically speaking, be called as such. Thus we often speak of Indian States but strictly speaking these Indian territories are not States because they lack in one characteristic element of State viz., sovereignty. In Political Science the term 'State' should be used in the scientific sense to mean an assemblage of human beings living in a particular territory under one organised government, the sovereign power of which is free from external control. The definition of this term is to be found in every text-book of Political Science. For the advantage of the readers we quote below the definitions of State as given by certain eminent writers:—

Need of the Definition.

Wrong idea of State.

Different definitions of 'State.'

The simplest definition of the State comes from Dr. Woodrow Wilson. He says—"State is a people organised for law within a definite territory."

Woodrow Wilson's definition.

Holland, an English writer, defines a State thus:—"A numerous assemblage of human beings, generally occupying a certain territory, among whom the will of the majority or of an ascertainable class of persons, is by the strength of such a majority or class made to prevail against any of their number who oppose it."

Holland's definition.

Dr. Garner gives the most explicit definition of the State in the following lines:—"The State as a concept of Political Science and constitutional law, is a community of persons more or less numerous, permanently occupying a definite portion of the territory, independent or nearly so of external control and possessing an organised government to which the great body of inhabitants render habitual obedience." In this definition of Dr. Garner we find that all the constituent elements political, physical and spiritual

Dr. Garner's definition.

are present. First, we find that the people must form one political unit obeying the dictates of the government duly constituted. Secondly, they must live in a definite territory. Thirdly, they must be independent of foreign control and fourthly, they must be guided by the collective will as expressed through the common supreme authority. Dr. Garner has extended this definition so as to recognise as States the Dominions of Canada, Australia, and Africa which though not completely independent have been treated as States by the League of Nations.

The above analysis shows that the State is both an abstract conception and concrete manifestation. As an abstraction the State is merely a juridical person separate and distinct from the concrete State which includes the people, the territory and the Government.

Sec. 2. The characteristic elements of State.

The characteristic elements of State are four in number. These are (1) population, (2) territory, (3) unity of organisation and (4) a sovereign authority which is free from external and internal control. The first two constitute its physical basis while the last two form its political basis.

(1) *Population* :—Without population no organisation can be possible. There cannot be any State unless and until there has been expansion of families and the territory contains population of some kind; but there is no definite rule regarding the size of population that a State should contain. The ancient States were formed with a small number of people while the modern State is found to contain a population which varies in size from a few thousands to many millions.

(2) *Territory* :—A nomadic tribe can never form a State. The people must live in a definite territory in order to constitute what may, strictly speaking, be termed as State. There is no definite rule regarding the extent of territory which a State must contain within it. The State may be either large or small. The size of the State is determined by geographical conditions, natural resources, climatic conditions and the patriotic or the imperialistic ambitions of the people. Nature has made Greece and Switzerland small States while the same nature has contributed to the expansion of Russia and China. Again, temperate climate has very often attracted people and added to the size of State. In the same way plenty of resources has helped the formation of many powerful States.

(3) *Unity of Organisation* :—Unity of organisation is an essential element in the formation of State. The people may live in a particular territory but that inhabited territory cannot be termed as State unless the people are controlled by a common government. The establishment of a common government which will regulate the conduct of the people and to which the people will render their obedience is urgently necessary in order that a State in the proper sense of the term may be constituted.

(4) *Sovereignty* :—This is the most important characteristic of State and it is this characteristic that distinguishes State from similar other social organisations. A State must have a sovereign power which is free from both external and internal control. The State must have complete authority over all the individuals that compose it and must at the same time be completely independent of the control of any other State.

Sovereignty
is an essential
mark of state-
hood.

The League of Nations was merely an association of States and could not enforce obedience to its sanctions. It could not compel the members to comply with its direction. This was proved by the failure of the sanctions against Italy during the last Italo-Abyssinian war. The League of Nations could not therefore claim to be designated as State. The native States, however powerful, do not possess supreme power in the sphere of administration and cannot for that reason be recognised as state. But India's independence has been now recognised and she can legitimately claim the proud position of a State. In the same way a component state (e.g., New York) of a Federation which is supreme in the domain of internal administration but which is still controlled by the Union Government in matters of common concern cannot claim statehood.

Sec. 2(a). The Idea and the Concept of the State.

A distinction is often drawn in Political Science between the abstract idea of the State and its empiric conception. The abstract idea of the State embraces all that is essential to State-life while the empiric conception refers to concrete instances of State-life. There are various types of State-life having distinct governmental organisation but underneath all these concrete types, there are certain essential elements which are common to all. The abstract idea of the State has reference to these essential elements which distinguish a State from other social organisations. It is, as Willoughby tells us, "the State reduced to its lowest terms."

The distinction
between
idea of the
State and
concept of
the State.

There are writers who draw a distinction between the idea and the concept of the State in a different way. According to them the idea of the State refers to an ideal State or a State which is perfect and complete while the concept of the State has reference to the actual State with all their defects and imperfections. The actual States present only incomplete pictures of true State-life and should ultimately be replaced by a Universal State which will be composed of the whole mankind and will bring peace and prosperity for the whole world. This is what is conveyed by the idea of the State. Thus Prof. Burgess says, "The idea of the State is the State perfect and complete. The concept of the State is the State developing and approaching perfection. From the standpoint of the idea, the State is mankind viewed as an organised unit. From the standpoint of the concept, it is a particular portion of mankind viewed as an organised unit. From the standpoint of the idea, the territorial basis of the State is the world and the principle of unity is humanity. From the standpoint of concept, again, the territorial basis is the particular portion of the earth's surface, and the principle of unity is that particular phase of human nature and of human need, which at any particular stage in the development of that nature is predominant and commanding. The former is the real State of perfect future. The latter is the real State of the past, the present and the imperfect future."

Sec. 3. Distinction between the State and Government.

The two terms 'State' and 'Government' are often used to mean the same thing. Thus when we speak of the state-management of railways we use the term 'State' in the sense of government; but for scientific enquiry distinction should be drawn between these two terms. We have seen in the previous section the essential characteristic of State. To constitute State all the four elements viz., (1) Population, (2) Territory, (3) Unity of organisation, and (4) Sovereignty must be present. By Government, on the other hand, we mean an organisation through which the will of the State finds expression. Dealey defines government as "the sum-total of all the legislative, executive and judicial bodies in the central, local and colonial organs." In every State we will find such an organisation without which the State cannot realise its own ends. The Government is therefore not identical with the State. The Government may change without affecting in the least the existence of the State. The change of Government from aristocracy to democracy does not bring about any change in the State. The State continues its existence in the same sense

Government means an organisation through which the Will of the State finds expression.

and to the same extent as it did before the change in the governmental form. The State is largely an abstraction while government is concrete. Dr. Garner draws a fine distinction between

Dr. Garner's view :— State and Government in the following words :—
 "The Government is an essential element or mark of the State but it is no more the State itself than the brain of an animal is itself the animal or the board of directors of a corporation is itself the corporation."

Government is thus an essential element without which the activities of the State cannot be fulfilled.
 What Government includes. Government, again owes all its authority by delegation from the State which alone possesses sovereignty. Government is thus an agent exercising delegated powers. It includes the ministers and heads of departments and the subordinate officers who contribute to the working of the machinery of administration.

✓ Sec. 3(a). Distinction between State, Community, Society, Association and Institution.

We have already defined the State as community of persons more or less numerous, permanently occupying a definite portion of the globe and independent of foreign control. State is therefore a particular type of community which has acquired all the attributes of statehood, viz., (i) Population, (ii) Territory, (iii) Unity of organisation and (iv) Sovereignty.

There may be many communities which have not as yet attained statehood. Community is much wider in implication than the State. It consists of a number of human beings who live together under conditions of social relationship, have common social objects and aspirations and are bound together by common conventions, customs and traditions. It is not at all necessary that the members should live in a particular area and have a common political organisation.

Society is made up of families, clubs, and many other organised associations and institutions within a community. Society thus is much wider in its implication so as to cover the whole range of social relations including the political relations while State has concern with political relations alone. Territoriality, again, is the essential mark of the State but society does not exhibit any such mark.

Association means a group of persons who combine for the promotion of a common object and proceed to achieve that object in

accordance with the prescribed rules and methods which the members have agreed to follow. We have many such associations in a society, e.g. a church, a university. A State differs fundamentally from other forms of associations. In the first place a man becomes by birth a member of a State. It is not a question of choice but a matter of accident. In case of other associations membership is a matter of choice. Again, a man must owe allegiance to one State while he can become a member of as many associations as he likes at the same time. Again, territoriality is the essential mark of the State but an association may include members living in different parts of the world. State has the characteristic attribute of sovereignty and can therefore exercise supreme control over all associations by enforcing obedience to its laws and even by ordering their dissolution and declaring them as unlawful assemblies. The control of the State over a member is all pervasive and the State may, in the exercise of such control, inflict punishment which may involve forfeiture of life. An ordinary association cannot take up such a drastic step against a recalcitrant member. The utmost penalty which it can impose is expulsion. Again, obedience to the State is compulsory and permanent while obedience to the ordinary associations is only optional.

Distinction
between
State and
Association.

Institution represents a recognised custom, tradition or idea which exhibits itself in and through human beings either in their personal conduct and relationships or through organised groups or associations. Monarchy is an instance of such an institution which is associated with many associations of modern times. Similarly, caste is an institution which ties together human beings under a distinct group.

What insti-
tution is.

Sec. 14. Distinction between State and Nation : and between Nation and People.

There is a good deal of confusion as to the exact meaning of the term 'nation'. The English meaning of the term differs fundamentally from the German sense although the latter has etymology on its side. The term is derived from the Latin word 'natus' meaning 'born'. The Germans for this reason use the term 'nation' in the sense of a body of persons who have a common racial origin, have common language, have a common civilisation, common customs and traits of character and common literature and

tradition. The English use the term 'people' to convey the same idea while they use the term 'nation' to mean a population organised under a political union within definite geographical limits. Political unity is an essential element in nation according to the English sense of the term. Sometimes the term "nation" is used in a narrower sense to mean people not only organised under the government but having spiritual unity, i.e., unity in the matter of language, customs and tradition. In this narrower sense the term 'nation' means State plus nationality, i.e., an ethnic homogeneity in its population.

The term 'nation' means a population organised under political union within a definite geographical unit.

The narrower sense of the term.

A distinction is drawn between nation and nationality by the English writers. The term "nation" has a political significance attached to it, while nationality according to the English writers indicates a common spiritual sentiment prevailing among a population having a common language, customs and traditions and usually of the same race and professing the same religious belief. Nationality is something spiritual.

Distinction between 'Nation' and 'Nationality'.

The term 'people' denotes a mass of population united together by a common civilisation. The common civilisation, again implies common customs and traditions and sometimes community of language and religion. Thus the English term 'people' is used in the same sense as the German term "nation". In the words of Bluntschli it means "a union of masses of men of different occupations and social strata in a hereditary society of common spirit, feeling and race and bound together specially by language and common civilisation which gives them a sense of unity and distinction from all foreigners, quite apart from the bond of the State".

Definition of the term "people".

Sec. 5. The Element of nationality.

Nationality which means a particular sentiment is the outcome of certain causes which are known as elements of nationality. The political writers differ in their opinion as to the essential elements of nationality. According to some writers these elements include common racial origin, community in language and civilisation, common customs and traits of character and common literature and traditions, while there are others who do not consider the community of race as the essential element but attach greater importance to community of language and geographic unity. As to this last point viz. geogra-

Some writers do not consider community of race as an essential element.

phic unity or in other words common residence on a particular territory there is difference of opinion; we cannot properly consider it as the essential element. Common residence, no doubt, fosters the growth of national feeling as it has done in the case of Scots and the Irish people. But when the national feeling once attains considerable development, it can continue in spite

Common residence whether an important factor.

of the fact that the people have ceased to reside in a common territory. Thus the Poles have managed to keep their nationality in tact although they happen to reside in different territories under alien governments.

The community of race may sometimes become the basis of nationality but we cannot regard it as the essential element of nationality. People springing from different races may form one nation, if the feeling of nationality is there; but community of race is found to play an important part because it is generally accompanied with community of language, customs and traditions. Again, we find that people who are racially homogeneous have formed distinct nations. Thus the English and the Scots have distinct nationalities in spite of their common origin.

Community of race; its importance.

People speaking the same language may have different nationalities.

Community of language plays a great part in fostering the development of nationality. This is because the same language serves as medium of inter-change of thoughts among the people and in that way leads to the development of a common political consciousness. We should not however think that nationality is solely determined by the language that is spoken. People speaking the same language may have different nationalities. Thus the Americans, though they speak the English language have a distinct nationality of their own. Nevertheless the importance of a common language cannot be ignored. The community of language generally carries with it the community of traditions and customs which is responsible for the sameness of feeling. Community of religion was once considered to be an essential element of nationality, but in these days of religious freedom it has lost much of its force. Common political aspiration, community of interest and ideal may also strengthen the feeling of nationality and may lead to the creation of mono-national States. Common subjection under an alien government often leads to agitation against such government and gives rise to a feeling of nationality.

Sec. 5.(a). Is India a nation: how far the elements of nationality are present in India ?

The spirit of nationalism is already at its height in India and has been promoted by the life-long activities of Late Mahatma

Gandhi, Sir Surendranath Banerjee, Mr. C. R. Das, and Mr. Subhas Chāndra Basu. The western critics however do not recognise the spirit of Indian nationalism and contend that the Indians cannot claim nationhood in view of the fact that they do not possess sovereignty which is the essential mark of nationhood. Strictly speaking, India, so long as she was under British rule, could not be called a nation according to the English sense of the term.

The next point for discussion is how far the elements of nationality are present in India. These elements may be enumerated thus :—(i) common racial origin, (ii) community in language and civilisation, (iii) common customs and traditions, (iv) common religion and community of moral ideals and natural interest, common subjection, and (v) common residence. Let us now see how far these elements are present in India. India is found to contain men who differ in race and religions, speak different dialects and have different customs and traditions. It is because of these diversities that the western critics emphasize the absence of elements of nationality in India. Mr. Winston Churchill exaggerated the gulf between the Hindus and the Muslims and Lord Birkenhead hopelessly failed to find in the heterogeneous population of India any mark of nationality. The opinion of these critics, however, cannot command universal and unqualified support. No doubt, the two principal communities—the Hindus and the Mohamedans—differ in religious faith, but in these days of religious toleration difference in religion can seldom stand in the way of India's spiritual unity. On the other hand the two communities are found in many places to speak the same language and have the same customs and traditions. This community of language and customs has contributed much to the growth of Indian nationhood. Another important factor which has helped the growth of nationality is the community of political and economic interest. Until recent times the people of India lived under the same government and had to obey the same laws and regulations. This subordination to a common authority led to the growth of spiritual sentiment which is the distinctive mark of nationality. But there are certain obstacles which have hampered the growth of Indian nationalism. India was so long a dependency of Great Britain which retained a rigid control over her external and internal affairs. The people of India were not allowed to administer their own affairs and did not enjoy the right of expressing their opinions freely on public affairs. This absence of freedom of speech and discussion had stood in the way of free interchange of thought and ideas and impeded the growth of that corporate sentiment which is the essential

How India is regarded by the critics.

Growth of Indian nationhood.

Obstacles which hamper the growth of Indian nationalism.

mark of nationality. Again, the caste system is antinational in this sense that it promotes sectional interest at the expense of national unity. The Harijan Movement of Mahatma Gandhi has been trying to eradicate this antinational tendency with a view to inspiring a sense of nationality among the various communities in India. Mr. M. A. Jinnah, however, retarded the growth of a common spiritual sentiment by formulating and achieving his Pakistan scheme which denies the existence of a sentiment of unity among the Indians. The British Government is now convinced that India can legitimately claim nationhood and has already recognised her right of self-determination. At the same time the Pakistan Scheme of Mr. Jinnah has found support from the said authorities with the result that India now stands divided into two national zones in which the destiny of the minority community has been placed under the mercy of the majority community.

Sec. 6. One Nationality, one State : the Right of Self-determination.

Nationality consists in certain feelings and ideals that a group of people entertain in common. This common ideal may have a free scope for development only when the people have succeeded in establishing a political organisation of their own. This is the reason why at present there is a tendency among people belonging to a particular nationality to form a separate State which will enable them to realise their own ends. This tendency is expressed by the expression "one nationality, one state". Happier will be the state of things if ever practical effect is given to this idea and States are organised on the principle of nationality. The State will then contain men belonging to the same nationality and in consequence, disputes and quarrels which at present take place among the citizens of a State will disappear. Again, we find that when men belonging to different nationalities happen to live in the same State, the dominant nationality often tries to destroy the weaker nationalities. Thus, we see that the Polish nationality is absorbing other nationalities that are not strong enough to resist its influence. Such a behaviour on the part of the stronger nationality justifies the aspiration of the weaker nationalities to form separate political organisations for their well-being.

The right of each nationality to determine for itself its own organisation was considered to be a solemn right in the past and was responsible for the disintegration of many polynational States like Austria-Hungary, Turkey and Russia. The assertion of the same right also led to the integration of many petty States, all belonging to the same nationality into one big State.

Mill enunciated this doctrine of self-determination and asserted vehemently that the boundaries of government should coincide in the main with those of nationalities. The Treaty of Versailles recognised this theory and this was followed by the creation of seven new States, viz., Poland, Finland, Isthonia, Latvia, Lithuania, Danzig and Czechoslovakia.

The ideal "one nationality, one state" has not yet been attained. A single State is found to embrace within its boundaries several nationalities. Thus the Slav and people belonging to Rumanian, Teutonic and several other nationalities have their residences in the kingdom of Hungary. The United States of America contains men of various nationalities. Again, men of the same nationality may happen to live under different States. Thus the Germanic nation is spread over many states. This is the actual state of things in modern States. Since the last century there has been a tendency towards the organisation of State in such a way as to include men of one particular nationality. This principle of nationality secured the political independence of Greece, Rumania, Servia and Bulgaria.

There are several limitations to this self-determination as applied to nationality. First, sometimes natural barriers intervene and separate one part of the people from the other. Secondly, political unity sometimes proves stronger than the bond of nationality and stands in the way of formation of mono-national State. Thirdly, the small national groups may not have the capacity to govern themselves. Fourthly, the narrow politics of extreme nationalism may bring in group jealousy or group hostility and make an end of all progress. Fifthly, the recognition of the right of each national group to shape its own will leads to the dismemberment of many old and big States and to the establishment of many small ones. The prominent States will lose their proud position while the small States will be too weak to maintain themselves. Europe which now consists of 68 nationalities that live in 28 States will go to form 68 small States. Sixthly, if this right of self-determination be conceded, people belonging to different nationalities will cease to owe their allegiance to the sovereign power which now controls their activity. This is antagonistic to the true theory of sovereignty. Lastly, experience tells us that men belonging to different nationalities may gain in peace and civilisation when they are united in one state. This fact proves clearly that there is nothing sacred about national grouping and goes to reduce the value of the ideal—one Nationality, one State. The history of Switzerland which contains men of different nationalities disproves the assertion of Mill that "free institutions are next to impossible in a country made up of different nationalities".

Sec. 6(a). Nationalism : its Psychology.

Nationalism is to be distinguished from nationality. Nationality as we have already seen is a purely spiritual sentiment ; with the growth of this sentiment there comes a desire in the group of men cherishing the same sentiment to assert their own autonomy and to establish an independent government for the preservation of the group-interest. This desire or spirit is the distinctive mark of nationalism. Each national has its own characteristic and is conscious of its difference from other such groups. At the same time it always attempts to maintain its separate entity by asserting its sovereign power. Nationalism thus exhibits the psychological marks—gregariousness and exclusiveness. The members of a national group form a corporate entity and will never tolerate an interference by any other national group on their corporate life and culture.

Mark of
Nationalism.

Sec. 6(b). Nationalism and perverted nationalism.

A true nationalist will never aim at eliminating a national group by denying its political independence without which it will be impossible for the group to preserve its special quality. Again, the more powerful nation should always bear in mind this important fact that no one method for organising the relation of individuals is correct universally. Different national groups must have distinct political organisations.

The ideal of nationalism should not imply the absolute segregation of each group. On the contrary nationalism should imply close relationship between different groups. Such close relationship will, as Mr. C. D. Berns tells us, enable each national group to develop its special qualities and thereby contribute to the civilisation of mankind. While working out their own mission the members of one group should remember that their mission may be more easily fulfilled if they have friendly relations with other nations of the world. In this way they will have a wider outlook and pass from the idea of nationalism to one of cosmopolitanism. The true idea of nationalism is thus inconsistent with the selfish desire for power and prestige. A nation that aims at extending its supremacy over many a weaker nation and desires to add to its economic prosperity by exploiting the resources of weaker people has got a narrow conception of nationalism. This is what may be termed as perverted nationalism.

Sec. 6(c). The influence of Nationality on the formation of states.

In the middle ages the states were formed at the option of the kings who were inspired by a sense of personal ambition and people had to submit to their dictates which had the force of law.

The strong grip of rulers over their subjects and their tyranny went a great way in kindling the flames of nationalism in the minds of people. The same flame was kept burning in Italy by the forceful pen of Mechiavelli in the 16th century. The same feeling of nationalism lay at the root of the organisation of the Danish and Swedish people. The Poles witnessed a great loss when their territories were partitioned by Russia, Austria and Prussia. This act of aggression strengthened the feeling of nationality of the Poles and the Poles still maintain their position against constant invasions. Next came the French Revolution which exhibited clearly the rising of the people against the domination of an ambitious ruler. People of Spain, German, and Italy were inspired by feeling of nationality in their attempt to resist the Imperialistic sway of Napoleon and the result was the defeat of Napoleon. An attempt was made by the Vienna Congress to cripple this feeling by involuntary merger of different states but this sinister attempt failed to put out the burning flames of nationalism.

In Europe, the national struggle for freedom derived its inspiration from the writings of Kant, Hegel, Goethe and Mazzini. The Belgians disobeyed the injunctions of the Vienna Congress and severed their connection from the Dutch. Germany and Italy which were split up into a number of small states were again consolidated and formed two national states. The Greeks rose against the Turks and won their national freedom.

Next epoch-making event was the Treaty of Versailles of 1919 which recognised the right of self-determination on the part of the small national states and brought statehood for the Poles, the Slavs and the Czechs. In India a keen sense of nationality inspired her people in their struggle for freedom and ultimately led to the flight of the British rule from India. The Muslim League under the able leadership of Mr. Jinnah demanded the formation of an independent State of Pakistan for the preservation of Muslim culture and interest and succeeded in dividing India into two national zones. The Congress was inspired by a much wider sense of nationality in the struggle for freedom but could not resist the communal bias of the Muslim League.

1. Sec. 6(d). Nationalism and Civilisation :—

The evils of Nationalism.

Nationalism exhibits an ardent desire on the part of a group to maintain its tradition, culture and interest. With a view to attaining this object each national group is found to demand an independent political organisation. This aspiration is indeed laudable. When each national group is given an independent status, it finds free scope for the development of its qualities without interference from other more powerful national groups. This

creates an atmosphere of peace in the world and contributes immensely to the civilisation of mankind. The backward national groups can easily adopt what is best in other groups and in this way the world makes progress in civilisation and culture. This is indeed true. We cannot however ignore the evils which perverted nationalism brings with it. Sense of power and prestige often prompts a more powerful nation to bring weaker national groups under its control. This is apparent from the attitude of Germany and Japan during the last great war. Industrial consideration and a desire to capture international market for commodities often creates an imperialistic tendency among powerful nations. In this way the selfish interest of powerful nations comes into conflict with the legitimate rights of the weaker nations. Hence in the modern world we find preparations for warfare and the use of atom bombs with disastrous consequence. This spirit of hostility which is often associated with perverted nationalism has its worst effect upon human culture and civilisation. It compels people to devote their time and energy to the invention of atom bombs which destroy human lives and retard the progress of human civilisation. In this way perverted nationalism becomes a menace to civilisation.

✓ Sec. 7. Organic theory of the State.

According to this theory the State is not merely an aggregation of human beings but there is a unity which is similar to that which characterizes a biological organism. Now what is an organism? It means a body composed of different parts or organs which perform different functions to promote the life of the organism. An organism therefore, is a living body and in this respect it is to be distinguished from a machine which has different parts but has no life. The State is compared to an organism.

Distinction between organism and machine.	It is composed of individuals who occupy the same position as is occupied by germ cells in a living being. The individuals in a State have no independent existence of their own but they continue their existence for the well-being of the State.
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They co-operate with one another in order to contribute to the development of the State in the same sense as the germ cells co-operate with one another for the promotion of the life of the living organism. Again, in origin, structure and function there are striking points of similarity between the State and the living organism. The State comes into existence through natural rather than artificial processes and is governed by natural laws of development, decay, and death. As the State develops, it exhibits a complexity of structure which is to be found in a living organism as it passes from infancy to maturity. The State has

Points of similarity.	
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Points of similarity.	
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different organs to perform its functions, and these organs or departments help one another for the realisation of the ends of the State. Finally, as in every biological organism there is a

State is a vital element, so the State has a life and a will.
 spiritual orga- Bluntschli who is regarded as an extreme advo-
 nic being. cate of the organic theory says that "State is no
 more artificial lifeless machine but is a living
 spiritual organic being". He is not satisfied with these remarks

and proceeds further to attribute a masculine personality to the State. Herbert Spencer, another advocate of the organic theory draws a number structural analogies between the State and the living organism. In each are present three systems which are described as follows :—(a) A sustaining system consisting of alimentation in the case of human organism and production in the case of State, (b) a distributing system consisting of the circulatory apparatus in the human body and the transportation system in society and (c) a regulatory system which represents the Government in the case of State or society and the nervous system in the case of animal organism.

The organic theory is one of the oldest theories of the State.

We find in the writings of Plato and Aristotle a
 An ancient comparison of State with human organism.
 theory. When we come to the modern era we find a large
 number of supporters, of whom Machiavelli,
 Hobbes, Herbert Spencer, Bluntschli, Albert Schaffle and the
 Russian Sociologist Paul Litentfield have made important contribu-
 tions to the Political science by enunciating and explaining the
 theory.

The organic theory emphatically states the unity of the State
 and the relation that exists between the State
 The theory and the individuals who are its members. When
 when used in a used in a moderate sense, the theory implies an
 moderate sense analogy that is drawn between the State and the
 implies an organism with a view to explaining the nature
 analogy. and organisation of the State. Looked at from

this point of view the theory is free from any adverse criticism;
 but if the theory is used in its extreme sense to mean that State
 is as good an organism as any living organism, there can be well-
 grounded objections to it. In this case the com-

parison fails in many points. Firstly, the animal
 Criticism of organism or any other living organism is concrete
 the theory. in structure, that is, its units are bound together

in a close contact ; while the social body is discrete, its units being
 free and "more or less widely dispersed". Secondly, the compari-
 son of individuals to germ cells has not been quite appropriate
 inasmuch as the former are intellectual beings having independent
 existence and separate will of their own, while the latter are

mechanical pieces of matter having no independent life and volition. Thirdly, in case of living organism the dependence of the part on the whole is essential

How state differs from a living organism.

while in the case of State the individuals are only partially dependent upon the State and can continue their existence apart from the State. If a limb is cut off from the body the limb cannot continue as a limb but must perish within a short time but such is not the case with individuals when they are separated from the State. Again, unlike the members of a living organism which exhaust their whole activities in maintaining the life of the organism the members of the State have many spheres of activities which do not coincide with their activity in relation to the State. Fourthly, the growth of an animal organism is unconscious; an infant cannot feel that he is growing both physically and mentally as he passes from infancy to maturity, but the development of State is largely the outcome of conscious efforts on the part of the members. Fifthly, with the development of a living organism the controlling power of the whole over the parts gradually increases. The case is otherwise when the State attains development. The development of the State means an extension of the freedom of the individuals who are the component parts of the State. Sixthly, the living organisms owe their existence to some pre-existing organisms but the State does not spring from some pre-existing State. Finally, the organic theory is defective in another fundamental point which consists in sacrificing the individual to the State. According to the modern theory the State exists for the well-being of the individuals and is not an end in itself. Dr. Garner summarizes his view of the organic theory in the following words:—"Some of these biological comparisons are ingenious and well-stated; to many writers they have proved fascinating and seductive (this is because they are tempted to extend the comparison to mere absurdity). To others they have constituted the basis of an argument for a theory of the State which would sacrifice the individuals to the State". To compare the germ cells to individuals living in a State is to take away their independence.

Sec. ~8. The Utilitarian Theory of the State.

The theory is another important contribution of modern political thinkers. It owes its origin to Bentham and has been fully explained in his *Fragment of Government*. Like the organic theory it is not concerned with the nature of the State but with the purpose or end of the State. According to this theory the State exists for "the greatest happiness of the greatest number." Every action of the State should be directed to promote

The State exists for the greatest happiness of the greatest number.

the general happiness of the people. Laws promulgated by the State should have for object the happiness of the general mass of the population. Again, this theory justifies the sacrifice of the wellbeing and comforts of a particular individual to those of the mass of population. The theory has been criticized by Bluntschli on the ground that the general happiness which it is the end of the State to promote, cannot possibly be secured by the State inasmuch as happiness depends upon the mental condition of human beings and is independent of the activities of the State. Against the adverse argument of Bluntschli it may be said that happiness sometimes depends upon the improvement of material conditions and the State can improve these material conditions and can thereby contribute to the general happiness as far as practicable.

✓ Sec. 9. The Idealist or Absolutist Theory of the State.

The idealist theory which assumed prominence in the writings of German philosopher Hegel and was popularized in England by the forceful pen of T. H. Green and Dr. Bosanquet had been dominating the English political thought until recent years.

The up-holders of this theory give the State an omnipotent position and recognise its claim to represent the whole of human society and to include within itself the social aspiration of all individuals. The State possesses a real personality and a real will in which the personality of the individual and his will are made to bow down in all cases and under all circumstances. In a State where the principle of democracy is followed the will of the State is no doubt identical with the general will, but this general will does not mean the sum total of individual wills. It represents in fact 'the transmuted and sublimated essence of what is best in the wills of all.' In this way the State necessarily brings with it a new will which is distinct from the wills of individuals and acquires a new personality over and above the sum of individual personalities.

Omnipotence
of the State.

The State may thus be conceived as a real individual having certain real rights and may justly be regarded as an end in itself. The individual owes allegiance to the State and can therefore claim no right which is in conflict with the real rights of the State. He derives his rights from the State and can have no right against the State. When the State demands the lives of individuals for military reason, the individuals have no legal right to raise any objection. In fact there is complete identification between liberty and law, and the individual obtains his real freedom in and through the State.

It should be noted in this connection that the above theory of the State has reference to those States alone which have attained

perfect development. An imperfect State cannot claim this attribute of omnipotence and is to be deprecated.

✓ **Sec. 9(a). Criticism of the Idealist Theory.**

The idealist theory as stated above has been subjected to searching criticisms and has given rise to a sense of dissatisfaction by extending a sort of semi-philosophical sanction to such activities of the State which in times of war deny even the solemn rights of citizens to their life and property. Several theoretical objections have been levelled against this theory. In the first place the theory assumes that the State is identical with the sum total of human society. This assumption is obviously false in view of the fact that there does not as yet exist any universal State. Again, each State has got a definite area and framed different rules of conduct for its citizens. The omnipotence of the State, if we can use this expression, cannot ignore this territorial limitation. Every State must therefore regulate its relation with other States in accordance with that very moral principle which is found to regulate the relation of one individual with another.

Secondly, the State exists for the individuals and not the individual for the State. The State can justify its existence only by promoting welfare of the individuals who compose the State. The State cannot have any other end and it is idle to argue that the State is an end in itself.

Thirdly, there is no substance in the distinction between the 'real' will and the 'unreal' will of the individual. The real will is something unknown to the individual and it is strange how an individual can have a will unknown to himself. This real will which, according to the idealist theory is merged in the general will, is thus a contradiction in term.

Fourthly, the theory errs when it assumes that the State is infallible and that in every case of conflict between an individual and the State the course which the State chooses to adopt must inevitably be the right course. Such an assumption is inimical to individual freedom.

Fifthly, the idealist tendency to conceive of the State as an isolated, self-sufficient and all-embracing institution cannot be in full agreement with the dynamic movement of human society which is marked by the growth and development of swelling number of voluntary associations. It is now a hopeless task for the State to prevent by any external act the expression of loyalty to these associations and to assert with success its claim to undivided loyalty from its citizens.

Lastly, in the words of Prof. Harold J. Laski the idealist theory of the State as formulated by Dr. Bosanquet remains a

formulation of a conceptional State *in posse* rather than of the States we know.

Sec. 10. Liberal Theory of the State.

This theory is a very old theory. It goes to associate with the State a sovereign power which gives orders to all and receives order from none. This assumption of sovereign power, by the State is a matter of necessity. In the absence of such power there will be chaos and confusion within the State. The assumption of sovereign power and the claim to obedience on the part of the State in which liberal democracy is in vogue had been in the past justified for the following reasons, viz., (1) it secured order, (2) it introduced a peaceful change, (3) it helped the satisfaction of demand on the largest possible scale.

The theory has been attacked vehemently in recent times on the ground that although the State has roughly promoted the first objective, it has utterly failed in its attempt to promote the last two objectives referred to above. We find in a liberal democracy no peaceful change. There we find a continuous struggle for power between the owners of instruments of production and the labourers. The owners are trying to maintain the existing social order and strongly object to any re-definition of class-relations. The labourers are bent upon capturing state-power with a view to re-adjusting class-relations. The third objective has failed and must always fail if the capitalists retain the state-power in their hands and pursue their profit-making policy to the detriment of the interest of the consumers. The failures and deficiencies of the theory have been proved by critics who emphasize the urgency of re-definition of class-relations. The challenge came for the first time from Karl Marx and Engels and subsequently found a classic re-statement in the pen of Lenin in recent times.

Questions and Answers

Q. 1. Discuss the constituent factors of nationality. To what extent do such factors exist in India?

(C. U. 1933; Bombay, 1935; Patna, 1944; Punj. 1939; Nag. 1941).

Ans. See Secs. 5 and 5(a).

Q. 2. What is meant by the organic theory of the State? Discuss the practical value of the theory. (C. U. 1932; 1935).

Ans. See Sec. 7.

Q. 3. How do you define a state :—(a) Hyderabad, (b) New York, (c) The League of Nations? Are they States? Give reasons for your answer. (C. U. 1936; Agra, 1943).

Ans. See Secs. 1 and 2.

✓Q. 4. What are the essential factors that contribute to the development of nationalism in a country? In what extent do you think they exist in India? (C. U. 1935).

Ans. See Secs. 5 and 5(a).

Q. 5. "A nation is not necessarily a State any more than a State is necessarily a nation." Explain the meaning of the statement and clearly differentiate nation and nationality from statehood. (All. 1939).

Ans. See Secs. 4 and 6.

Q. 6. What is meant by government? (C. U. 1938).

Ans. See Sec. 4.

Q. 7. Define Nation and Nationality. What are the basic elements of Nationality? Is any one of them absolutely essential? (Punjab, 1936).

Ans. See Secs. 4 and 5.

✓Q. 8. "One nation, one state." Is this a sound ideal? (Madras, 1934).

Ans. See Sec. 6.

Q. 9. What are the essential attributes of a State? Distinguish between state, nation, society and government.

(All. 1930; Bom. 1936; Punj. 1941).

Ans. See Secs. 2 and 2(a).

✓Q. 10. Consider the view that the boundaries of States should coincide with those of nations. (C. U. 1945).

Ans. See Sec. 4.

Q. 11. Explain the influence of nationality on the formation of States. (Punj. 1942).

Ans. See Sec. 6(c).

✓Q. 12. Nationalism is a menace to civilisation (Cal. 1942).

Ans. See Sec. 6(d).

CHAPTER III

THE ORIGIN OF THE STATE

Sec. 1. Several Theories.

The history of the origin of the State is a speculative discussion.

In this chapter we shall deal with some of the principal theories that have been suggested by the political thinkers regarding the origin of the State. The theories may be enumerated as follows :—(1) The Theory of Social Contract, (2) Theory of Force, (3) The Theory of Divine Origin, (4) The Patriarchal Theory, and (5) The Matriarchal Theory.

Sec. 2. The Theory of Social Contract.

Two types of contract. State of nature.

This is one of the speculative theories that have been put forward in order to explain the fundamental questions how and why the State came into existence. This theory has played an important part in the political thought of Europe and America. It professes to ascribe the origin of the State to a contract. It is by means of a contract that people of the primitive world laid the foundation of political society. The contract, again, may be of two different kinds and some writers speak not of one contract but of two different contracts one of which represents the social or political contract and the other represents the governmental contract. Another feature of the social contract theory is that every writer starts with the State of nature, i.e., a state which existed before the creation of civil society but the writers differ from one another in their conception of the State of nature. People lived in this state of nature where law of nature prevailed and wanted to replace it by a civil society on account of certain difficulties which were faced by them. This replacement was effected by means of contract.

It is an ancient theory.

The theory of social contract is as old as the Greek philosophers who preceded Plato and Aristotle. These philosophers were of opinion that State was the result of an agreement between men and was something which was opposed to nature. In the religious book we find reference to such contract entered into between the king on the one hand and the people on the other. Thus in the Bible we find that an agreement was made by king David with the elders of Israel and they anointed him king over Israel. In the Mahabharata too, the theory in some crude form has been recognised. The theory was supported by Hobbes in his 'Levia-

than', by Locke in his "Two Treatises of Civil Government" and by Rousseau in his 'Social Contract' published in 1762. In Political Philosophy we are mainly concerned with the views of the last three writers and we shall presently discuss their respective view on the topic in detail.

Hobbes : Hobbes wrote his book *Leviathan* at a time when England was suffering greatly from the effects of civil war and he was of opinion that the absolute system of Government would bring peace and comfort in England. For this reason he enun-

Hobbes's
conception of
the theory.

ciated the theory of contract in such a way as to justify the absolute power of kings. He started from the State of nature which according to his view was a state of continual warfare. "The people enjoyed natural liberty which meant nothing more than liberty that each man hath to use his own power for the preservation of his own nature". The right under such a state of nature could be enjoyed by the stronger persons, and weaker persons were left absolutely to the mercy of the abler section of the community. People wanted to replace this so-called state of nature by civil society and this civil society was created

His description
of the state of
nature.

by means of a contract which they made with one another. The sovereign was not a party to such a contract and for that reason he was not bound by the terms of the contract. This fact would be evident from the very contract itself which was of the following description :—every man approaches every other man and says, "I authorise and give up my right of governing myself to this man or this assembly of men on this condition that thou give up thy right to him and authorise all his actions in a like manner." The sovereign derived absolute authority and people had no right to question his authority.

This statement of the social contract as found in Hobbes's *Leviathan* has been criticised on these two principal grounds :—

First, he over-emphasizes the legal aspect of sovereignty and fails to recognise the force that lies behind the legal sovereign. The king cannot do whatever he pleases. He must take into account the will of the people and is bound to act in accordance with that will. *Secondly*, in his theory we find a confusion between State and Government. State is

The contract
gave the king
absolute
authority.

not the same thing as government. The change of a form of government or a particular monarch does not lead to the destruction of State.

Locke : Unlike Hobbes, Locke was against absolute monarchy. Hence in his social contract theory as stated in his two Treatises

of Civil Government he attempted to justify the legal right of the people to depose the monarch who betrayed his trust. He started like Hobbes with the state of nature but his state of nature was different from that of Hobbes in that it was a state of equality and freedom where people followed the dictates of reason and justice. There arose a difficulty on account of the absence of a common authority which could protect the just rights of individuals against the arbitrary interference of others. People were tired of this state of nature and desired to establish civil society by means of contract. There were two contracts. By the first contract every member of the primitive society or of the state of the nature came into an agreement with others to this effect that he would give up his natural power and resign it up into the hands of the community in all cases. After such a civil society was thus established people made another contract with a particular sovereign whereby they resigned to the ruling monarch certain rights in order that their remaining rights may be protected. The king was thus a party to the contract and in consequence enjoyed limited authority; again, people had a legal right to depose him whenever he would betray the trust imposed upon him. Locke was, therefore, in favour of the limited monarchy. He fully recognised the political sovereignty which would act behind the legal sovereign and influence his action. Unlike Hobbes, Locke distinguished the State from the Government. Locke however failed to see that the king might have a legal right to oppress the people but the people could not claim a similar right to change the Government for that oppression. The right to rebel against the legal sovereign can be at best a moral right and not a legal right.

Locke was
against
absolute
monarchy.

Rousseau : In his theory of social contract Rousseau attempted to combine the two extreme views of Hobbes and Locke. His object was to uphold the sovereignty of the people. In his theory we find only one contract which is social in character; no contract was, according to Rousseau, entered into with the governing authorities. He started with the state of nature which was a state of ideal happiness but difficulties and inconveniences manifested themselves as population began to increase. The State of nature ceased to be an ideal State and people intended to replace it by a civil society. A contract was made by the individuals in such a way that every individuals gave in common his person and all his powers under the supreme direction of the general will and received again each member as an indivisible part of the whole. The sovereign power was vested in the general will which according to Rousseau was to be expressed directly by an Assembly in which every citizen had a personal vote. When the civil or political society was thus established, a

Rousseau's
state of nature
was a state of
ideal happi-
ness.

governmental authority was created by a legislative act and this authority was to be subordinate to the general will.

This theory of Rousseau as found in his "Social Contract" published in 1762 did not mean the destruction of individual liberty but only reconciled it with the absolute authority of the people as a whole. The laws were to be made with the consent of the people, and in obeying the laws so made an individual was obeying but himself. It may be argued as against this theory of Rousseau that the State can possibly continue its existence so long as absolute unanimity can be secured and that such unanimity can hardly be secured. Rousseau had a previous knowledge of such adverse criticism and stated that absolute unanimity would be required only in the original contract and once the contract had been made unanimously, residence in a territory would imply a consent to obey the law of that territory.

Rousseau's enunciation of the contract theory gives us an idea of popular sovereignty. Like Locke he fully distinguished the State from the Government and proceeded further to reduce the latter to the position of an agent. Rousseau's idea of popular sovereignty. The independence of the governmental authority was thus ignored. Again, his view of Government included the executive functions merely and excluded the legislative authority. His idea of general will is misleading because it is a will that aims at public good and for that reason cannot, as he says, necessarily be represented by the will of the majority of the people.

Sec. 2 (a). Criticism of the Contract Theory :—The contract theory was severely criticised by the writers of the nineteenth century. Among them were Jeremy Bentham, Sir Henry Maine, Sir Frederick Pollock and Professor Bluntschli. Sir Henry Maine was of opinion that nothing was more worthless as an explanation of the origin of the state than the theory of contract and Sir Frederick Pollock characterized it as "one of the most successful and fatal of political impostures." The theory is essentially individualistic inasmuch as it regards the State as the deliberate creation of a man and bases the authority of government on the consent of the governed. Certain criticisms have been advanced against this theory. Let us consider them briefly in this section. First, it is unhistorical : history does not record any instance of such agreement among men leading to the establishment of political society. Again, as the unit in primitive society was the family the individuals were not free agents and could not enter into any contract with a view to establishing civil society. The advocates of the theory have sometimes referred to particular

contract such as the May Fowler compact but when examined critically all these fail to account for the origin of a society which is political in character. Secondly, the very fact that

An idea of contract implies a political consciousness.

people have an idea of contract and its binding effect implies a political consciousness which can scarcely be attributed to men living in a state of nature. The people can be made to obey the terms of contract only when the State has come

into existence and a governmental authority has been created. Thus we see that contract can never be the basis of the origin of the state. The developed idea of contract which the contract theory implies is possible only when people have lived in an organised society for a considerable period of time. Even if we assume that people living in a state of nature had an idea of contract, this original contract would not be legally binding because there was then no authority to enforce it. Thirdly, the conception of natural right upon which the theory has been built up is fallacious.

Conception of natural right is fallacious.

Right is to be distinguished from power; it means a power that is recognised by society and cannot exist in a state of nature. Thus in the state of nature people enjoyed only powers and not rights.

Fourthly, the theory is dangerous inasmuch as it makes the State the product of individual caprice. Edmund Burke declares in his 'Reflections on the French Revolution' that "state ought not to be considered as something better than a partnership in a trade of pepper and coffee, calico, or tobacco or some other such low concern to be taken up for a little temporary interest and to be dissolved by the fancy of the parties". Fifthly, Kant's

The theory is dangerous.

attempt to support the theory on the ground that it represents an ideal of social relation cannot succeed in view of the fact that the ideal

relation between the state and the individual is to be founded upon a permanent and compulsory bond and not upon a voluntary agreement which leaves sufficient excuse for breach. Lastly, the artificial or conventional explanation of the State has been attacked on the ground that the State is a natural growth and not a manufacture; the origin of the State is as natural as its fullest development.

✓ Sec. 2(b). The Contract Theory : its value and influence.

In spite of the above criticism the contract theory can be accepted in its entirety if it means no more than that the relation between the subjects and the rulers should be one of reciprocal right and obligation, of protection and obedience. The theory errs when it goes further and asserts that the State owes its origin to any particular contract. This theory is also attacked on the ground that it unduly emphasizes the

part which consent plays in the formation of civil society. Utility of All this is true. Nevertheless we cannot ignore this theory. the utility of the theory. Though this theory cannot now be accepted as a scientific explanation of the origin of the state, it at least attempts to define the wholesome relation which should exist between the rulers and the ruled. The theory rendered useful service by brushing aside the divine right of kings to rule their subjects in any way they liked and by formulating scheme of government in which the rulers could derive their authority from the people and would remain answerable to them. The theory as enunciated by Rousseau exercised a great influence on practical politics and assisted greatly in the formulation of individual rights. In fact Rousseau's 'social contract' served as an inspiration to those who participated in the French and American Revolutions and played an important part in the declaration of the rights of Man and Citizen which followed such Revolutions.

This theory has also influenced the formation of Federal organisations under which the component states agree to transfer their powers in relation to certain matters of general concern to the newly created federal government in order to secure better and more economic administration of those matters. It was also relied upon in England as a justification of the deposition of despotic rulers.

Contract behind federation.

Sec. 2(c). Causes of the decline of the theory.

The theory found sufficient support in the seventeenth century; but gradually unsoundness of the theory attracted the minds of subsequent thinkers like Hume and Bentham. There were also other critics who proved beyond any shadow of doubt that the theory was not only unhistorical but also illogical and even dangerous.

With the advent of the historical school of Political Science there was a change in the angle of vision. Montesquieu pointed out in clear terms the deficiencies of the theory and introduced the historical method; the latter method left little room for speculation upon which the contract theory was founded. This method was followed by Burke and Austin in England and the so-called contract theory failed to command confidence.

Historical school.

In the nineteenth century Political Science was aided by Biology in tracing the evolutionary growth of Political institutions. This evolutionary theory of the origin of the State is now accepted as the most scientific theory and has completely ousted the contract theory from the pre-eminent position it once occupied.

Sec. 3. The Theory of Divine origin.

The theory is much older than the Contract theory and flourished at a time when the political writers were mainly Churchmen.

The earthly kings are the vice-regents of God.

It means that the State owes its origin to God. The earthly kings are the vice-regents of God and exercise their sovereign power by virtue of a right that has been conferred upon them by God. The country is governed in accordance with the

will of that Omnipotent Creator, as revealed to His favourites on Earth.

The theory got strong support from certain religious books of great repute. The Old Testament speaks of the divine origin of royal powers; with the advent of Christianity the Church-father advised the people to be in subjection to the higher powers; "for there is no power but of God and the powers are ordained of God". The kings are responsible to God alone for their actions and people have no other duty but to render their obedience to the kings.

The theory is supported by religious books.

The theory has also been supported by the ancient Sanskrit literature. The Mahabharata contains some passages where this idea of divine origin of royal powers has been incorporated. The European kings very often used the theory as a justification of their governing the country. The modern political writers, however, do not support this theory. They look upon the State not as a direct and immediate creation of God but as an organised association of human beings controlled more or less by the will of the people. They deal with the State as they find it to be and study it apart from any religious conception.

Ancient Sanskrit literature supports the theory.

Criticism :—The theory of Divine origin has been severely criticised on the following grounds ;—First, the theory represents a religious view of the State but in political science we should study the State as a human institution. Again, we actually find in a republican form of government how the presidents are elected directly or indirectly by the people. Secondly, the theory has an element of danger inasmuch as it makes the king responsible to God alone and thereby justifies the arbitrary exercise of royal powers. Thirdly, in the New Testament we find some assertions against this theory. The use of the phrase "powers that be" suggests that there may be powers other than that which is derived from God. Another evidence that we can quote from the Bible to show the want of support for the

The theory justifies the arbitrary power of the king.

theory is the following statement of Christ : "Render unto Cæsar the things that are Cæsar's and unto God the things that are God's". Fourthly, the theory can justify monarchy only and no other form of Government. Fifthly, the theory cannot explain why and how a particular individual or set of individuals would have the vested right to govern others. Sixthly, the theory is antagonistic to the principle of democracy and does not find support in states where democratic organisations still exist.

The use of the Theory:—Though the theory fails to explain the origin of the State, the theory has certain merits which we cannot ignore. In ancient times religion had a great influence on men's mind and therefore this religious explanation helped greatly in the maintenance of peace and order. Again, the theory truly represented the ancient order in which the ruler combined in himself the position of a king and priest. The theory had been used by ancient monarchs as a justification of the absolute and arbitrary power that they used to exercise. The people would render obedience to the king because they regarded him as God's vice-regent on earth. Even in these days the theory contains some element of truth. It conveys an idea that God is the source of all authority and has implanted in the minds of men an instinct which prompts them to obey the orders of earthly kings. At the same time the theory insists on a scrupulous performance of duties by kings by making them responsible to God for all their acts. This theory is made use of in explaining the close connection which still subsists between religion and the State. The coronations of kings are still associated with certain religious ceremony. Lastly, the theory adds a moral tone to the functions of the State.

Sec. 4. The Theory of Force.

There are some writers who attribute the origin of the State to mere force. The State, they say, is the outcome of human aggression. The person who was physically stronger than others brought the latter under his control and thus led to the creation of a State wherein his authority prevailed. In this way he became the tribal chieftain and began to increase the number of his subjects by means of wars and invasions. Then the tribal chieftains fought among themselves and the victory determined the authority that would control the affairs of the defeated tribes.

The theory has been used for various purposes. The Individualistic writers have advocated restriction of the functions of the Government by showing that it is quite natural that in society individuals who are stronger would subjugate the weaker and prosperity of

Uses of the theory.

the country would be increased if the State does not interfere with the natural instincts. The Socialists on the other hand do not favour the present method of industrial organisation where success depends upon the use of force and one person prospers at the expense of the others. The theory was also used in ancient times by the Church-fathers to discredit the authority of the State on the ground that it was, as they alleged, based upon brute force.

The Theory and its Merits :—There is an element of truth in this theory. Bluntschli finds justification for this theory on the ground that an element of force is indispensable to State. We cannot deny the fact that State has sometimes been founded by the use of force. Again, some amount of force is necessary in order that the State may continue its existence.

How force becomes a necessary element.

The State exists for regulating the conduct of the people in such a way as to make it possible for them to enjoy their rights without infringing at the same time the similar rights of other persons. In order that this end of the State may be realised, the State must make use of force to compel the members to obey laws implicitly. The use of force is also necessary for the defence of the country and we find that every civilised State maintains military force to protect the country from foreign invasion.

Criticism :—Like the two other theories which we have already discussed, this theory has not been free from criticism. Although force happens to play a considerable part in the establishment of a State, still it will be wrong to regard it as the sole factor in the organisation of States. The State based on mere brute force can

But force cannot be the sole factor.

continue its existence for a temporary period of time but ultimately it will be found that something other than force is necessary to ensure the continuance of State. The theory of force is antagonistic to the idea of freedom. Might must be associated with right in order to make the foundation of a State stable.

The theory of force is antagonistic to the idea of freedom.

When the people recognise the right of a particular authority to compel obedience, the authority would continue to be obeyed even when it has lost its physical strength. Again, mere force can never be a justification for the exercise of authority by the State.

• Sec. 5. Historical or Evolutionary theory.

We now come to the true theory of the origin of the State. This is known as the Historical or Evolutionary theory ; according to this theory the State is a historical growth. We cannot point out any particular date when the State first manifested itself

but the fact is that it has come to the present state of development gradually. The people did not become conscious of the utility of political organisation all at once, but as the difficulties inherent in the state of nature were keenly felt, the political self-consciousness appeared in the mind of the more intelligent persons and the latter began to preach the utility of such political organisation and ultimately succeeded in inducing the people to form a political society. The State was born when this common consciousness of a community reached a certain degree of preciseness. The State made its appearance first in subjective form and continued in that position till the government or the mechanism of the State was created.

The theory ascribes the origin of State to an evolution.

How the State comes into being.

We should not however think that the State attains the final stage of development as soon as the external organisation is attached to it. The process of development continues and the State goes on expanding its sphere of activity day by day with a view to realising the ends for which it exists. Along with the development of the State, the external organisation becomes more and more complex and scientific in form.

Several factors have contributed to the origin and development of State. We have already seen that political consciousness is the principal factor because in the absence of such consciousness no State can be formed. The other factors which have played their respective parts are kinship, magic, religion and force. The bond of kinship was in the past strong to bring people together under the leadership of the eldest member of the family. The magician sometimes brought several families under control by dint of his cunning and intelligence. In course of time magic lost its power and religion came to occupy its place. The priest appealed to people in the name of God and they began to render obedience to him because they believed that he received his inspiration from God. Force had its part to play in the origin and development of State. History records many instances of tribal conquest by means of which a powerful tribal chieftain assumed by dint of brute force control over the less powerful tribes and brought them under his supreme authority.

The historical theory of the origin of the State includes within it the best elements of all the other theories which we have already discussed and discarded the defects that are inherent in them. It recognises the merit of the theory of the Divine origin inasmuch as the very movement of people to have a political organisation suggests that God has implanted in human nature a tendency to political life. Again, the

Historical theory contains some elements of other theories.

theory does not ignore the part that force happens to play in bringing men into political union with others. Lastly, an element of contract which implies consent on the part of individuals has played an important part in the organisation of the State.

Sec. 6. The Patriarchal Theory.

We have already seen that the State is a historical growth. The question that is at issue in the present section is the nature and character of primitive organisation. The family was often regarded as the original unit where the members obeyed the authority of the headman. It represented a rudimentary form of State and its government. The opinions, however, are divided as to the nature of the family. There are two theories, the Patriarchal and the Matriarchal, which will deserve our special attention at present.

Types of
primitive
family.

A staunch advocate of the Patriarchal theory is Sir Henry Maine. According to his opinion as expressed in his *Ancient Law*, the original family was of a patriarchal type. In such original family the descent was traced to a common male ancestor and the members lived under the control and supervision of the oldest male ascendant or *Pater familia*. This view of the nature of the primitive family is supported by historical evidence and scriptural account. The ancient Jewish nation was a union of twelve tribes which traced their origin to the first father Jacob. In Rome there were three tribes with common origin and there was the 'Patria Potestas' which recognised the unlimited authority of the father over the members of the family. The Indian history also records instances of large families controlled by the eldest male member.

Sir Henry
Maine's view.

Maine traces the Origin of the State in the following words :—The elementary group is the family connected by the common subjection to the highest male ascendant. The aggregation of families forms the *gens* or the house. The aggregation of houses makes the tribe. The aggregation of tribes constitutes the commonwealth.

Criticism :—The Patriarchal theory has been criticised by several writers on the following grounds :—First, it has been argued that the family has not always been the starting point of the formation of State. It is impossible to determine definitely how the State first made its appearance. Of course the Patriarchal theory which traces the origin to the family is the simplest explanation of the origin of the State but

The theory
is not
supported
by history.

this too much simplicity has been the cause of misrepresentation. The human society has been, as Sir J. C. Frazer tells us, built up by a complexity of causes. Secondly, it has been established by certain writers that the theory is not supported by history. The critics, viz. McLenan, Morgan and Edward Jenks show instances of primitive family which differed radically from the Patriarchal type. In primitive times the system of polyandry was prevalent and for that reason it was simply impossible to trace descent to a particular male ancestor and descent was therefore to be traced to female ancestors. Thirdly, the order laid down by Sir Henry Maine in which State ultimately was formed out of family which was alleged to be the original unit has been rejected by Edward Jenks who quote historical instances to show that the tribe was the earliest unit and that in course of time, this broke up into clans which in their turn broke up into householders and ultimately these householders were dissolved so that the individuals themselves became the unit of society.

Maine's order
challenged.

Difference
between
family and
States.

Fourthly, the State cannot be family 'writ large'. The two institutions differ widely and in essential points. In the family there is, no doubt, the authority of the father over the children but this authority is natural. In the State the authority is one of choice. Subordination is the principle of the family, equality that of the State. Again, the domination of the father over the children of his family loses its force as soon as the children attain majority, but the dominion of the political power in a State must be perpetual. On the above grounds it would not be true to say that the State developed out of a patriarchal family.

Sec. 7. The Matriarchal Theory.

The theory starts with the idea that in primitive society there was promiscuity of sexual relationship and in consequence it was scarcely possible to trace descent through male ancestors. Hence the descent had to be traced through females. The theory, therefore, rejects the view held by Sir Henry Maine regarding the patriarchal family and quotes evidence to show that patriarchal family was preceded by matriarchal family. As an evidence in favour of this theory the chief advocates such as McLenan, Morgan and others refer to the queens of Malabar and the power of the princesses among the Marhattas. This theory, however, cannot be accepted inasmuch as we find that history does not prove adequately the universality of such family among primitive people. Both the types of family, patriarchal and matriarchal were in prevalence ; the patriarchal

Matriarchal
family was the
earliest form of
family orga-
nisation.

theory however is entitled to greater support because those people whose contribution to the modern political thought we can never ignore, were organised on the basis of the patriarchal order of family life.

✓ Sec. 8. Ancient State as compared with Modern State.

The modern State differs from the ancient State on the following important points :—First, the individuals are enjoying greater right than what they did in an ancient State. They have at present certain rights which are recognised by public law or by the constitution and can be enforced against the State when occasion arises. A compromise between State sovereignty and individual liberty has been worked out most satisfactorily. Secondly, individuals are allowed in a modern State to participate in the affairs of the government and thus in obeying the rules laid down by the Government they obey but themselves. The right of franchise has been extended to women and slavery has already made its disappearance. Thirdly, the modern State has introduced a system of representative form of government which was unknown to the ancient world. Fourthly, the modern State while compared with the ancient State has a narrower and a more definite sphere of activity. In ancient times the interference of State extended to religion, morals and culture, while the modern State has no direct connection with these subjects.

Fifthly, in the modern State the Government or the machinery through which the will of the State finds expression has assumed a scientific form inasmuch as there are three departments (the Legislature, the Executive and the Judiciary), each having separate functions ; but in the ancient State there was no such division of functions.

Sixthly, the modern States are morally though not legally controlled by international treaties and agreements and the international law has attained considerable development in recent times ; but in ancient State the conception of such law was almost unknown.

Lastly, there has been a general tendency of an increase in the area and population of a modern State. This general tendency has been fostered by the development of the means of communication and transportation and by introduction of a scientific and decentralised method of administration. At the same time there has been an opposite tendency for the formation of National States with distinct ethnic and geographical unity.

Questions and Answers

✓Q. 1. "Government is based on force". Examine the truth of the theory (C. U. 1916, '42).

Ans. See Sec. 4.

Q. 2. Dr. Garner says, "We are therefore led to the conclusion that State is neither the handiwork of God, nor the result of superior physical force, nor the creation of resolution or convention, nor a mere expansion of the family." Answer briefly what you understand by each of the statements and give the correct conclusion about the genesis of the State (C. U. 1924).

Ans. See Secs. 2 to 6.

✓Q. 3. Criticise the Contract theory of the Origin of the State (C. U. 1931, '41).

Ans. See Sec. 2(a).

Q. 4. Write notes on the Origin of the State (C. U. 1930).

Ans. See Secs. 2, 3, 4 and 5.

✓Q. 5. Discuss the Social contract theories of the origin of the State (C. U. 1945).

Ans. See Sec. 3.

Q. 6. Discuss briefly the main forces that have led to the emergence of the State (Bombay, 1931).

Ans. See Sec. 5.

Q. 7. How far is it true to say that the origin of the State lies in force (All. U. 1933).

Ans. See Sec. 4.

✓Q. 8. Examine carefully the doctrine of Social contract. How far does it furnish the true explanation of the origin of the State (Punjab, 1937).

Ans. See Sec. 2(a).

✓Q. 9. Examine the value of the Social contract theory as propounded by Hobbes and Locke. What are the reasons for its disappearance to-day (Nagpur, 1935).

Ans. See Sec. 2(c).

Q. 10. Briefly describe the organisation of a Patriarchal society and show in what respect it differs from modern political society (Mad. 1937).

Ans. See Sec. 6.

✓ Q. 11. Explain the theory of Social contract as interpreted by its leading exponents. How far do you find its implication present in the modern federal constitutions. (Patna, 1934).

Ans. See Secs. 2 and 2(b).

Q. 12. "Government rests on force". Examine the statement (C. U. 1946, '48).

Ans. See Sec. 4.

Q. 13. Discuss the Evolutionary Theory of the origin of the State (Bom., 1941, Dac., 1935, Nag., 1943, Agra, 1943).

Ans. See Sec. 5.

CHAPTER IV

THE FORMS OF THE STATE AND FORMS OF GOVERNMENT

Sec. 1. The Principles of Classification.

No scientific classification of State is possible so far as the legal nature and fundamental ends of the States are concerned, inasmuch as all States are alike in this respect; but States may be classified on the grounds such as the extent of the territory, population and resources, the form of government and the number of persons in whom the sovereign power has been vested. The last two principles of classification are of greater importance in a treatise on Political science. Dr. Garner however points out the unscientific character of a classification of States on the basis of forms of Government in the following manner:—"To classify States on the basis of nature and forms of their government is very much like classifying railroads, for example, with respect to the organisation of their Board of Directors". Such a classification in its last analysis is nothing more than a classification of government, and not a classification of States.

Sec. 2. Aristotle's Classification of States.

Aristotle has classified States first on the basis of the number of persons in whom the sovereign power is vested and

secondly on the basis of the manner or motive according to which the sovereign power is exercised. Thus Aristotle's classification is based upon the number of persons exercising the sovereign power. he speaks of the (1) rule of one, (2) rule of the few and (3) rule of the many. Each of these forms has been further subdivided into two types, normal and perverted. The normal States are those which are governed with due reference to the good of the community as a whole while in the perverted types of States the selfish interest of the ruler predominates. Aristotle describes the normal type of State which is ruled over by one individual as the Royalty, the perverted form of which is known as Tyranny.¹ Again, he speaks of Aristocracy,² which represents a rule of the few with reference to the good of the community as a whole, and describes the perverted form of it as Oligarchy.² The third type of normal State is Polity,³ where administration is carried on by the many for the interest of the community as a whole and the perverted form is described as Democracy.³

The above classification of Aristotle has been criticised on the following grounds :—First, it has been criticised by Von Mohl on the ground that it rests not upon any organic fundamental principle but upon mere numbers, and hence is mechanical rather than spiritual, quantitative rather than qualitative in character. Criticism of Aristotle's classification. Secondly, Professor Seeley and Leacock have criticised the classification on the ground that it is not exhaustive and for that reason is not applicable to modern States. Thirdly, the classification of States on the basis of location of sovereign power is worthless inasmuch as in modern times there is scarcely any State where the actual sovereignty is vested in one person or in a small body of persons. Fourthly, the distinction that has been drawn between Aristocracy and Polity is very fine ; it is very difficult to determine where one ends and the other begins. Fifthly, Aristotle's classification has been the cause of much confusion because it fails to discriminate between the forms of the State and the forms of government.

Sec. 3. The Classifications given by other writers.

Machiavelli improved upon the classification given by Aristotle by adding a mixed State which, according to his opinion, is the ideal State. Bodin classifies States on the basis of number of persons in whom the sovereign power rests. There are, as Bodin tells us, three types of State viz., (1) Monarchy, (2) Aristocracy and (3) Democracy. Locke who is careful enough to distinguish government from State gives us three forms of

government which are described as follows :—(1) Monarchy, (2) Oligarchy and (3) Democracy. Montesquieu the well-known French writer speaks of three forms of government—(1) Republican, (2) Monarchical and (3) Despotic. The republican form of government in its turn may be either aristocratic or democratic in character. It represents according to him a form of government in which the supreme power is vested in the whole or only in a part of the people. The German writer Garies gives an account of two types of State: the Unitary State and the Composite State. The Composite States again, may be of three kinds: real union, federal union and confederation. The next famous German writer Bluntschli recognises four fundamental forms of State viz., (1) Monarchy, (2) Aristocracy, (3) Democracy and (4) Ideocracy or Theocracy. In addition to these forms he speaks of three secondary forms of State which are described as (i) free, (ii) half-free, and (iii) unfree states. The fourth of the fundamental forms which is described as Theocracy requires some explanation. It represents a form of government in which the actual ruler is God and the earthly ruler is looked upon as his representative whose function is to interpret the will of God. This is dualistic or united form of theocracy which is to be distinguished from the pure type of theocracy in which the supernatural person who is conceived of as sovereign, rules directly and immediately without any human agency. Bluntschli gives concrete instances of these pure and limited forms of theocracy.

Bluntschli's
classification.

Theocracy
criticised.

Some writers of political science have referred to the existence of a mixed form of State which is nothing but a mixture of three principal forms of government viz., (i) Monarchy (ii) Aristocracy and (iii) Democracy. Even Aristotle recognizes a mixed type which according to him is a mixture of oligarchy and democracy. Cicero and Polybius both regarded the mixed State as the best of its kind and referred to the Roman State as a concrete example of the same. The German writer speaks of such mixed States where monarchy, aristocracy or democracy is influenced by other political factors. This idea of mixed State is open to criticism because the State is a unity and as such cannot admit of combination and inter-mixture. The mixture of monarchy, aristocracy and democracy does not make a mixed State but represents a mixed form of Government. Great Britain in which we find a mixture of monarchy, aristocracy, and democracy does not give us a good example of mixed State because in the State there is unity and sovereignty is undivided. Sovereignty which is the essential mark of State must in all cases be con-

Mixed States.

Criticism.

centrated in the same person or body of persons. As Lewis says—
 “as a State cannot be governed both by one person and by several,
 it cannot at the same time, be both a monarchy and an
 aristocracy.”

Sec. 4. The Best classification of Modern States.

Professor Leacock gives us a classification of States which takes into account all the various forms of governmental organisations to be found in modern times. He first divides modern States into two classes viz., (1) Despotic and (ii) Democratic. By a despotic State he means a State in which the sovereign authority is vested in one individual who governs according to his own caprice. Such States scarcely exist in modern times when the political consciousness of the people has attained considerable development. In democratic States on the other hand the supreme authority rests in a majority of the people or their representatives. The democratic States are not always of the same kind. They may be divided into constitutional monarchies and republics. The former type of democratic States has a hereditary monarch whose power has been limited by the constitution in order that he may not exercise his power without due consideration to the welfare of the people. It is to be distinguished from the republican form of democracy in this sense that in a republic the chief executive head is elected whereas in a monarchy the chief executive is hereditary. Each of these two types of democracy is further subdivided into two classes, viz., (i) Unitary and (ii) Federal. In unitary form of government the local governments derive their power from and are controlled by the central government while in a federal type of government it is the constitution that defines the spheres of activity both of central and of the local governments. Lastly, each of these forms of government may be either Parliamentary or non-Parliamentary in character. The parliamentary form of government represents a type of government in which the Executive is responsible to the Legislature and holds office during the pleasure of that body while in the non-parliamentary form of government there is no such dependence, the Executive being independent of the Legislature and holds office for a period of time fixed by the Constitution. In the manner described above Leacock states his classification of modern States. His classification may be represented thus in the following table :—

Professor
Leacock's
classification.

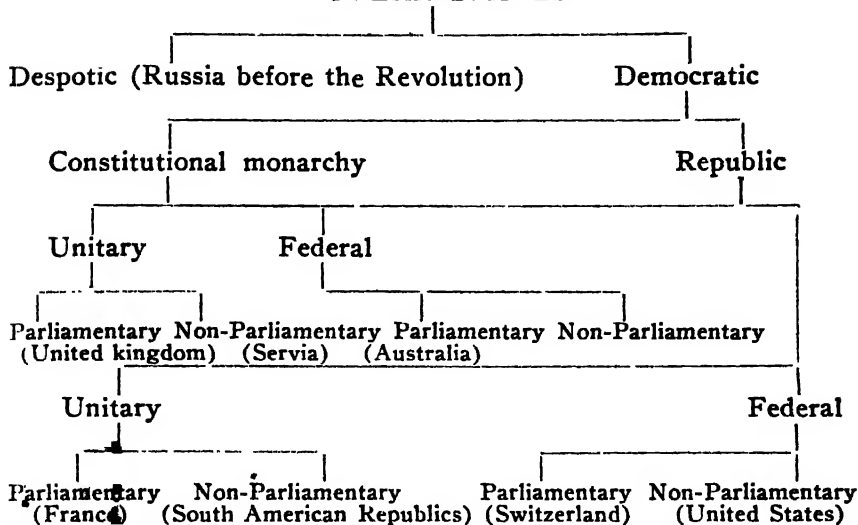
- (i) Despotic
- and
- (ii) Democratic.

Democratic
State classified.

- (i) Unitary
- and
- (ii) Federal.

Parliamentary
and non-Parlia-
mentary.

MODERN STATES



Sec. 5. Monarchy : Absolute monarchy and Limited monarchy.

Monarchy represents a form of Government where sovereign power is vested in a particular human being. It may be of of two different types, viz., (1) Absolute monarchy and (2) Limited monarchy. In absolute monarchy the will of the reigning monarch prevails ; he can pass any law he likes and people must obey it although they are not consulted at all when that law is made. In limited monarchy the power of the king is limited by the constitution ; the king for this reason, cannot govern the country with a view to promoting his selfish object. The welfare of the people is to be taken into account before any law is passed. The legislative power is not vested in the king alone but is to be exercised by him in combination with the legislative chambers which represent the people.

The Monarchical form of Government is the oldest type of Government that exists to-day. In ancient times monarchy was absolute in character. The ancient monarchs used to identify themselves with the State. The State existed for their welfare and not for the promotion of general well-being. Louis XIV of France said "the State is myself". Under such circumstances people could scarcely have any liberty and the interest of the public was always in danger of being sacrificed to the personal interest of the monarch who was

Absolute
monarchy
and limited
monarchy.

Absolute
monarchy
of ancient
times.

supreme. The people were not allowed to participate in the affairs of administration and therefore had no opportunity to train themselves up in politics. Sometimes this type of absolute monarchy could do immense good to the community. This happened when the supreme authority rested in an able and unselfish monarch.

Elements of strength in absolute monarchy.

Thus it was a common form of speech that if a good despot could be ensured despotic monarchy would be the best form of Government. John Stuart Mill, however, does not believe in the truth of the above proposition for the particular reason that the best form of Government can never

be ensured unless the interest of the people can be stimulated in public affairs. Again, when succession depends upon the accident of birth, a benevolent despot may leave behind him a successor who unlike his predecessor, will rule the country in utter disregard of the welfare of the people. History records

Mill's view.

many instances of absolute monarchs whose despotism has been a terror to the people. In

spite of this criticism we cannot ignore the elements of strength, vigour and energy of action, promptness of decision and secrecy

The merits of the absolute form of Monarchy.

of counsel and simplicity of organisation which characterise the absolute form of monarchical government. Again, a sovereign Assembly is often guided by the interest of the party in power while a monarch has a broader outlook and is

found to be concerned with the general interest of his subjects. The merits of this form of government have been fully recognised by both Hobbes and Rousseau. Among people who are still merged in barbarism and who have not yet been in a position to develop political consciousness, the absolute monarchy is the only form of government that can be satisfactorily worked.

In modern times political consciousness of the people cannot tolerate the absolute authority of the monarch in the domain of Government. Hence monarchical system is dying out and yielding place to democratic system.

The limited monarchy can claim superiority over absolute monarchy in this sense that it gives the people an opportunity to participate in public affairs and thereby to

Why limited monarchy is preferred ?

acquire some experience in politics. The very fact that the power of the monarch has been strictly limited by the constitution goes to show that the real ends of the State is to promote

the welfare of the people. This form of government is prevalent in the United Kingdom where the king occupies the position of a nominal figure-head and the people have a supreme voice in governmental affairs. We cannot, however, ignore the utility of

the monarch in such a limited form of monarchy. He is the hereditary executive head and acts as a symbol of unity within the Empire. He enjoys threefold right, viz. (1) the right to be consulted, (2) the right to encourage and (3) the right to warn. He is possessed of a personality the influence of which can never be exaggerated. His personal relation counts much in the orderly administration of foreign affairs, and his life-long tenure of office avoids the cost of periodical election. "The hereditary principle",

Dr. Garner's
view.

says Dr. Garner, "tends to secure an uninterrupted and orderly succession in the executive office without the recurring dangers and inconveniences, the tumults and disorders which are

almost inseparable from the method of popular choice".

Sec. 6. Aristocracy : its Merits and Demerits.

The term 'aristocracy' was formerly used in the sense of a government by the 'best'. According to Aristotle it represented a form of government where a few persons ruled

What does it
mean ?

with a view to promoting general welfare; it was distinguished from oligarchy which was a government by a few wealthy persons in their own

interest. This distinction has now lost its importance and the term 'aristocracy' conveys the same idea which the ancient writers attached to oligarchy. Aristocracy may be of several types ; there may be aristocracy of wealth, of culture and education, or there may be priestly and military aristocracies.

In spite of all the defects of aristocratic government, it possesses certain qualities which we cannot ignore. It introduces a conservative element into government and avoids rapid changes. This form of government will always try to preserve customary laws and

Merits of
Aristocracy.

revere specially everything that is old. True it is that innovation is the sign of progress but too rapid changes are detrimental to the welfare of the people. What is essentially necessary is reform which is neither too new nor too unexpected. This form of government attaches importance to experience and training and seeks to secure the services of men of talents. The ancient writers have regarded it as a form of government which can undoubtedly claim superiority over other form in respect of strength and efficiency. John Stuart Mill says that aristocracies have been remarkable in history for "sustained mental ability and vigour in the conduct of public affairs".

John Stuart
Mill's view.

This remark of John Stuart Mill is however true not only when aristocracy means a government by the most capable few ; but difficulties

are always felt in selecting these few persons who are the fittest to govern the country. The various principles that have been

suggested for this purpose are equally unsatisfactory. The principle of heredity is defective inasmuch as the heirs may not possess the same political capacity which was possessed by their fathers ; good qualities are not necessarily transmitted from father to son. This was the view of Benjamin Franklin who found no more reason for hereditary legislators than for hereditary professors of mathematics. There is another principle which is equally unsatisfactory. This principle suggests that the possession of property is the best criterion by which the fittest may be differentiated from the unfit. There are however persons, who though poor, are still possessed of high faculties which are specially necessary in the sphere of administration. Again, there are rich men who possess little or no political faculties. Thus we find that neither birth nor wealth can be a satisfactory test of fitness for government.

The chief weakness of aristocracy lies in the fact that it excludes the masses from the field of politics and gives no opportunity for the political training of the people. The mere selection of the fittest men cannot guarantee that administration will be carried on with reference to the welfare of the people. Again, the division of the people into classes pleases nobody. The lower classes who have no voice in the administration are often put to serious oppression under such a form of government. Lastly, it attaches greater importance to external pomp and its extreme conservatism hampers the real progress of the country.

Sec. 6(a). Democracy : its Rise and Growth.

The idea of democracy is an old one. It existed even in the most primitive society where people lived in groups and shared in common the fruits of their effort. There was the tribal council which administered justice and settled disputes among ancient people. In the early Vedic period the Indo-Aryans carried on their tribal administration through the Sabha and the Samity formed on roughly democratic principle. The kings in those days had to yield to the decision of the Sabha and the Samity. The Mahabharata in its Santiparva refers to 'Ganas' which mean democracies. In the Buddhist period Lord Budha explained clearly how administration could prosper on strictly democratic lines. Kautilya in his Arthasastras referred to democracies which prevailed in the different parts of India. These democracies of ancient India found a severe shock when the Maurya Kings attempted to carry on imperialistic policy. Democracies, however, dragged on their existence till the invasion of the Huns which gave a death blow to the democratic States of ancient India.

In the western countries too democracy had a remarkable pro-

gress in the days of Homer when the kings were obliged to convince the general body of freemen of any important decision made by them. At Athens pure democracy was introduced in the age of Pericles when the popular assemblies known as the Ecclesia played the most prominent part in the sphere of administration. In Rome democracy came into being when with the disappearance of Roman Kings power came into the hands of Patricians and a struggle ensued between the Patricians and the Plebians and republican constitution established the equal rights of the Plebs and their solemn right to participate in government through the meetings of the people.

This Roman democracy could not make headway because the people who were peasants lacked in the will and the capacity to govern themselves. Again, the republican organisation on the basis of city-State could not be maintained when Rome gradually became a world-State and Roman imperialism found free scope for development.

The fall of the Roman republic meant practically an end of democracy in the ancient world. The whole of Europe witnessed a new era of feudalism in which the king was theoretically the master of all lands but the real power of government was exercised by the Lords known as the tenants-in-chief to whom the king granted estates.

Democracy found adequate support from the forceful pen of Montesquieu, Voltaire and Rousseau in the eighteenth century. In fact modern democracy owes its present strength to the inspiration of these able writers. The declaration of Rights of people which followed the American War of Independence and the French Revolution gave democratic ideals a documentary form. The extension of franchise and growth of political consciousness of the labour classes and the organisation of political parties and the First Great European War contributed greatly to the growth and spread of democratic ideals in Western Europe. Several new States came into being and were organised on democratic models, but democracy gradually lost its support as it failed to tackle successfully the economic depression which followed the war. The rise of dictatorship in Italy, Germany and Russia crippled the progress of democratic ideals.

Sec. 6(b). The Modern Democracy as compared with Ancient Democracy.

Direct democracy has given place to Indirect democracy.	The modern democracy is found to differ from the ancient democracy on the following points :—First, the ancient democracies were smaller in size and people had to participate in the affairs of the State directly and to assemble in a particular place for that purpose, but the modern demo-
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cracies are larger in size and do not permit such direct participation in the affairs of the State.

Secondly, the modern democracies are indirect in character. The citizens cannot participate in the affairs of the Government directly but administration is carried on by the representatives of the people.

Thirdly, the citizens enjoy greater rights and freedom under a modern democracy. They have certain rights which they can enforce against the State, but in ancient democracy no such rights were ever recognised. The individual existed for the State and not State for the individual.

Fourthly, there has been extension of franchise with the result that administration is now carried on with the consent of the people. In ancient democracy only the citizens whose number was limited could interfere in matters of administration.

Fifthly, in ancient democracy there was no separation of powers and all the three powers were centred in the people ; in modern democracy there are three distinct organs with specifically defined powers.

Sec. 7. Democracy : its Merits and Demerits.

By democracy we mean a form of government where the people are allowed to participate in administration. It is a government of the people by the people and for the people. With the spread of education and the growth of political consciousness among people the democracy is becoming the most common form of government in modern times. The democracy may be of two different kinds :—(1) Pure or Direct democracy, (2) Indirect or Representative democracy. The first form viz., the direct form of democracy implies a direct participation of the people in the administration. The people assemble in a particular place and deliberate upon legislative measures that should be adopted for their general well-being. This form of democracy can possibly prevail in small city-States where it is possible for the citizens to assemble in a particular place ; but a big State can never introduce this direct form of democracy. In the ancient city-States of Greece this form of democracy was introduced with success and all the citizens who were distinguished from slaves used to participate in the proceedings of the Legislative Assembly. In modern times this form of democracy is to be found in some of the mountain cantons of Switzerland.

The modern States are generally very large in size and contain numerous population ; hence democracy is indirect or representative. In such a form of democracy the citizens do not participate in the administration of public affairs directly but choose their

representatives who actually hold the supreme power. The laws are made by these representatives and the citizens are legally bound to obey such laws. This form of government claims superiority over other forms of government for the following reasons :—First,

Merits of
indirect
democracy.

the representatives of the people will, through fear of losing their seats in the next election govern the country with reference to the will of the people. In this way the responsibility of the persons who govern to the persons who are governed can be effectively enforced. Secondly, the individuals are given opportunity to stand up for their own rights and under such circumstances individual rights cannot but be safe-guarded. Thirdly, the general prosperity will be greater when numerous people direct their individual efforts in promoting it. Fourthly, it gives the masses an opportunity of participating in public affairs and thereby improves their political training and strengthens their patriotic spirit. It elevates the character of citizens and infuses in them a new life with greater sense of responsibility. Fifthly, it draws no distinction between one class and another but puts all on a footing of political equality. People are allowed to enjoy equal political privileges and for this reason no particular section entertains any grudge against others. Sixthly, it makes the government steady and least liable to be carried away by passions of the moment. Seventhly, this form of government is less subject to revolution because full effect is given to the principle of equality and the administration is carried on with reference to the will of the people.

The weakness of democracy cannot be left out of consideration in a treatise of Political Science. The following defects have been pointed out by the critics of democratic government :—

First, this form of government attaches greater importance to quantity than to quality. Secondly, it is a government by the most ignorant and the most incapable who happen to claim the majority of population. Such being the case democracy cannot ensure better administration of the public affairs. It is no doubt true that the representatives may lack in expert knowledge but this defect can be remedied if experts are employed and consulted. Thirdly, it has been criticised for the over-confidence of those who participate in the government and for their sense of irresponsibility. The administration is carried on by many persons together and the share of each individual in a blunder, if committed, is infinitesimal. Fourthly, according to Sir Henry Maine, this form of government lacks stability and is not favourable to the development of art, science and culture. Fifthly, democracy is wasteful because candidates are found to spend huge sums in election campaigns. Sixthly, there is no real connection between democracy and liberty.

Weakness of
democracy.

Party Government can seldom secure equal rights to all citizens alike. Lecky criticises democracy in the following manner : "it ensures neither better government nor greater liberty ; indeed some of the strongest democratic tendencies are adverse to liberty. On the contrary strong arguments may be adduced both from history and from the nature of things to show that democracy may often prove the direct opposite of liberty."

Seventhly, democracy cannot ensure an effective organisation which can take action immediately. The different elements in the democracy do not often agree and the result is that prolonged discussion does not lead to any fruitful decision.

In spite of the above weaknesses the merits of democracy outweigh the demerits and with the spread of education and growth of political consciousness among people, it has become impossible to refuse the demand for franchise. Again, people become happier when they are allowed to share the responsibility of government even though they cannot carry on the administration on efficient lines. Even in these days when democracy is losing ground its cause has been taken up by England and U. S. A. where democracy has brought greater liberty for the people.

• Sec. 7(a). Essential conditions for Success of Democracy.

The success of democracy depends upon the active co-operation of the people in the affairs of government and upon their capacity of fully realising their responsibility. They should always aim at promoting the general welfare and sacrifice their sectional interests. They should be honest in their endeavour and discharge their civic duties with care and deliberation. John Stuart Mill enumerates the following conditions :—First, the people must be really anxious for the representative form of government and understand the principles upon which it is based. Secondly, they must be zealous in maintaining the system. If they do not do so there is a great chance that the country will come under the control of some other autocratic form of government and the people will lose their sovereign power. Thirdly, they should be willing to discharge their civic duties diligently and prudently. Fourthly, there should be a written constitution which define the public and private rights of the citizens and curtail the power of the majority in bringing about sudden changes in the organisation of the State.

Fifthly, there should be some sort of separation of powers so that each department may check the excesses of the other. Sixthly, there should be adequate provision for public education so that people may get proper training in politics. Again, democracy

cannot achieve its ends in the absence of alert and intelligent citizens who are very keen for maintaining democratic tradition. Democratic institutions can work smoothly where the state happens to consist of men who belong to the same nationality. Lastly, adequate steps should be taken for safeguarding the interest of the minorities so that democracy may stand firmly on the full support and co-operation of every interest within the State.

*** Sec. 7(b). Anti-democratic organisation of modern times :
Totalitarian States : Rise of Dictatorship : Bolshevism :
Fascism : Nazism :**

In modern times the democratic ideals have lost their force and the efficacy of dictatorship has come to be recognised in certain States. The essential features of dictatorial State is its totalitarian conception. The State is not only sovereign in the legal sense but has right to regulate every department of social structure—art, science, religion, culture, industry. The reason why there has been a change in the angle of vision is not far to seek. The First Great War and the economic crisis which followed it proved to the hilt the deficiencies of a democratic government and its tremendous failure to cope with economic crisis. The failure of democracy to solve the problem is a patent fact; Germany, Austria, Italy, Poland and Spain had to abandon democracy and introduce dictatorship in its place in order to overcome the crisis. The day of liberal democracy which so long left the field of Economics untouched by governmental control were gone and dictatorship brought with it rigid control over the economic life of people. The defects of democratic organisation manifested themselves in the post-war period. The policy of Government was found to be unsteady. The representative parliament was an association of debators who could not arrive at an agreed programme. The party organisation was associated with corruption, bribery and favouritism. This deprived the state of the services of the ablest statesmen. The rise of numerous parties told seriously upon the stability in the sphere of administration.

Again, the ideals of democracy are harder of accomplishment than the ideals of a totalitarian State, the citizens of which have only to do what they are told and have not to think or make a choice against the high command of the dictator. Hence dictatorship has its supporters. Dictatorship may be either totalitarian or political in character. The former type which prevails in Germany, Italy and Russia ushers in the rule by a single party by prohibiting opposition in any form and brings every sphere of national activity under the supreme control of the Party Leader who thus assumes the proud position of a Dictator. The latter type is invoked as it was done in Poland and Yugoslavia in order to overcome a politi-

cal crisis only and is not meant for controlling the whole national life. We shall presently discuss the organisations and policies of the three types of dictatorship which have already made their mark. These are :—(i) Bolshevism or Communism in Russia, (ii) Fascism in Italy and (iii) Nazism or Hitlerism in Germany.

(i) *Bolshevism* :—The policy of Bolshevism which has already made considerable headway in Russia since the abdication of the Tsar was formulated by Lenin and his chief lieutenant Trotsky. Those leaders were ardent followers of Karl Marx whose theory of surplus value inspired them and led to revolutionary activity of the proletariat against the owners of capital and property. Lenin and his followers came to be known as the Bolsheviks.

The machinery of administration is controlled by the Communist party. The present Stalin constitution is no doubt democratic in form but is highly autocratic in character, dominated as it is by the Communist party which is composed mainly of workers and peasants. No opposition party is allowed to exist and intervene in the discussion of the Communist party. True communism is still unknown in Russian soil. The U. S. S. R. has not attained that goal where each individual contributes according to his capacity and gets according to his needs.

The communist view of the State is one of ultimate annihilation. According to the Soviet philosophy the State will die as soon as the Proletariat assumes the political power. Stalin, however, is not ready to abandon the state unless the whole world attains the complete phase of communism.

(ii) *Fascism* :—The chaotic condition which followed the conclusion of the First Great War of 1914 gave Benito Mussolini, the eminent Italian socialist an opportunity to organise a fighting band with the object of restoring order in Italy. Mussolini and his followers gradually strengthened their hold and their party which came to be known as the Fascist party assumed complete control over the Government organisations ; all executive officers were held responsible to the Leader of Fascist party. Again, like Bolshevism, Fascism does not allow more than one party to rule over the country but unlike Bolshevism it provokes no class war. Its fundamental creed is to establish a harmonious relation between labour and capital. Fascism points out the evils of democracy or Government by the illiterate masses and holds that the Fascists chosen from the most capable will be better substitute and make for efficient administration of the country. According to the Fascist ideal the state is omnipotent and the Government is irresistible. The individual cannot claim any right which the state

is bound to guarantee. The citizens must remain completely subordinate to the state in all respects.

The principle of representation is different from that prevailing in democratic countries. The deputies chosen to the lower chamber represent not the individuals but the Corporations of which the individuals are members. Again the individual voters have no freedom of choice ; the deputies are to be chosen from the approved list maintained by the Grand Fascist Council. The Legislature comes to play a subordinate part and has to register the will of the omnipotent dictator. The importance of military training is exaggerated and participation of people in war is encouraged.

(iii) *Nazism or Hitlerism* :—This movement came into being when after the First Great War of 1914 Germany was faced with serious economic difficulties and political disorder. The National Socialist party seized this opportunity and under the able guidance of Hitler succeeded in strengthening its position in Germany. This party which is also known as the Nazi party is highly organised and has a large number of supporters. Herr Hitler was the leader of the party and ruled Germany by dictation. Here we also find rule by a single party ; opposition is strictly prohibited. Like Fascism it stands for the armed security and emphasizes the need of military training and militant spirit. The chief objective of this party is to make Germany a self-supporting country and to restore her national prestige by regaining the territories lost during the war. Unlike Mussolini, Hitler denounces the supremacy of the state in all spheres. He stands for the supremacy of himself and his party and is bold enough to assert "we command the State". He thus subordinates the States to the Nazi party which will control all aspects of life of German people. Unlike Fascism which stands for corporative control in every sphere of human life Nazism encourages personal leadership. Hence in Germany we find under the Omnipotent leader many inferior leaders or lesser Fuhrers.

Sec. 7(c). Fascism and Communism Compared.

Fascism and Communism are two different systems which have acquired prominence in the present-day political philosophy. Both these doctrines are equally vehement in their attack of liberal democracy which has served as a hand-maiden to capitalism and proved incompetent to cope with economic crisis. Both agree in maintaining a single political party and strictly prohibit opposition in any form. These are the points of agreement which we find between the two systems. In other respects they differ fundamentally. Each has a distinct method for its achievement.

According to the Fascists the State is the embodiment of the Fascist ideal. It is through the State that the individuals can find their true freedom. The communists on the other hand regard the State as a mere weapon with the aid of which the proletariat carries on its class war. After the proletariat has acquired supremacy the state will disappear. True Communism cannot tolerate any inequality in wealth. It is against private acquisition of wealth. It stands for complete annihilation of private property.

The Fascists hold that economic inequality is natural and for that reason should be maintained ; private profit earned by the capitalist is thus justified but at the same time some amount of governmental control has been deemed necessary in order to restore peace and order. The State has imposed heavy taxes on profit and deprived the capitalists of their right to dismiss labourers without the consent of the Government. In other respects the capitalists enjoy full liberty. The labourers have been controlled in a greater measure. Their wages have been fixed by government decree and their right to bargain by combined effort has been taken away. The Fascists denounced in strong terms the communistic ideas and have been supporting the cause of the capitalist from the very beginning. They have suppressed labour movements by dint of physical force. The labourers therefore cannot expect to get better conditions of life under the Fascist rule. Hence after the imprisonment of Leader Mussolini in 1943 we found general satisfaction among the labourers.

Sec. 7(d). How far Dictatorship is a satisfactory substitute for democracy.

The first great war was followed by an economic depression of a serious type ; the slow and unsteady democracy failed to devise means of eradicating this evil. The result was popular discontent. Anti-democratic organisations were formed and found support. The steady improvement in the economic condition of the masses in Russia under communist dictatorship created confidence in favour of dictatorship with the result that democracy had to yield place to dictatorship in many European states. Germany and Italy came under the strong grip of Hitler and Mussolini respectively. These dictators were singularly competent to tackle successfully the post-war problems for some period. They enforced obedience to their command and administration went on smoothly till the outbreak of the last great war. During the earlier part of the war the dictators achieved monumental success but they witnessed a disastrous failure in the long run. This failure was due to the following defects which were inherent in dictatorship.

- (a) Dictators could not tolerate difference of opinion and

banned the same with all vehemence they could command. The result was popular discontent.

(b) People became apathetic. The want of popular sympathy accounted for the fall of Nazism and Fascism from the European soils.

(c) Dictators had no root to stand firmly. Hitler had no able successor to bear the responsibility. Hence with the disappearance of Hitler there was utter disorder in Germany.

Sec. 8. The Cabinet or Responsible form of government.

The Cabinet form of government means a form of government where the Executive is held responsible to the Legislature. It illustrates the close relation that may possibly exist between the Executive and the Legislature. The executive functions are administered by the ministers who are chosen from the party in power and who are usually members of the Legislature to which they are both individually and collectively responsible. There may be titular executive head as in Britain and France ; but the real executive authority is the cabinet which is found to introduce all important legislative bills and induce the Parliament to pass them into acts. The seats that the ministers occupy in the Legislature help them much in the matter of legislation and at the same time give them an opportunity of defending their policies from attack. The ministers hold their office so long as their policies are supported by a majority in the Legislature or in the lower house to which they are usually responsible. For the general policies of the government the ministers are collectively responsible to the Legislature but for their individual conduct they are individually responsible. The Cabinet again, can dissolve the Parliament in order to see whether the new Legislature supports their policy or not. The ministers who are members of the Cabinet are really chosen by the leader of the party in power though they may be technically appointed by the titular executive head.

The cabinet system of government owes its origin to Great Britain and the satisfactory results that it has yielded there have recommended its introduction in many other civilized countries. Thus we come across this system of government in Belgium and France.

The countries where Cabinet system has been adopted.

Sec. 9. Presidential or Non-responsible form of Government.

The Presidential form of government is to be distinguished from the Cabinet form of government in this essential

point that in the former the Executive is constitutionally independent of the Legislature. In such a form of government there is a real executive head who can exercise his power according to the rules laid down in the constitution. It is the constitution that determines the power that should be exercised by the Executive and the Legislature, and the supreme court is to determine whether each has acted within its jurisdiction. Thus we find that the theory of separation of power lies at the root of the independence of the Executive. This form of government prevails in the United States of America, in Switzerland and the most of the Latin-American Republics. In the United States the President who is elected for four years is the real executive head. His powers are definitely limited by the constitution and if he exceeds the limit thus imposed on his power, his acts will be declared *ultra vires* by the supreme court. He appoints the ministers who are responsible to him and not to the Legislature. The President is independent of the Legislature and cannot be removed from office except upon impeachment. The President, however, can recommend legislative measures by means of 'messages' which he addresses to the Congress from time to time. He cannot dissolve the Legislature.

Sec. 10. The Merits and Demerits of the Cabinet Government.

The Cabinet form of Government can work smoothly in times of peace for the following reasons :—First, the prime minister who is the head of the Executive and who directs the course of Legislature is generally the ablest man of the country. Secondly, the responsibility of the cabinet to the representatives of the people in the Legislature leads to the vigorous party organisation and facilitates the training of the masses in politics. Thirdly, this is the only form of Government in which the responsibility to the persons that are governed is ensured. Fourthly, the executive department can, through its ministers, prepare, initiate and urge the adoption by the legislatures of those important legislative measures which for executive reasons appear to be necessary or advisable. The members of the Legislature in their turn draw attention of the Executive to the grievances of people they represent by exercising their right of questioning the ministers. Fifthly, the party that is in power is to govern the country subject to the criticism of the party that is in opposition and hence cannot but look to the real interest of the people.

In times of war the weakness of the system is keenly felt by the country. The system cannot at once adapt itself to meet great emergencies like war when unity of action is much more required than anything else. When such emergencies take place, a council of minis-

Government
in the U.S.A.

Why the
Cabinet system
has been
adopted ?

Weakness
during the
time of war.

ters cannot be expected to govern the country as successfully as a dictator. The system cannot work successfully in the absence of an efficient party organisation and for this reason the system has been associated with evils of party government. The vigorous party organisation which is associated with this system impairs the growth of individual opinion and causes waste of time and energy. The power of the Executive, to dissolve the Legislature goes to lower the position and prestige of the Legislature and sometimes threatens the members to support measures which they do not really like. The stability of the Executive is dependent upon the support of the Legislature and cannot but be at stake when as in France no particular party can command majority in the Legislature.

Sec. 10(a). Merits and Demerits of Presidential form of Government.

The Presidential form of Government gives the Executive head a freedom which knows no legislative control. He holds his office for a fixed period of time and can take any measure which he deems proper. The concentration of power in the Executive head brings in an energy and promptness in the system of administration and helps greatly in times of war when hesitation or disagreement among the members of the Executive Council proves fatal.

The system is well adapted to States which are composed of different communities with diversity of interest. The chief Executive head is not selected from among the party leaders and the evils of party government cannot for that reason vitiate the system of administration.

The system is not beneficial in times of peace when deliberation can promote the real interest of the country much more than unity and promptness of action. The absence of closer relation between the Executive and the Legislature may often result in a deadlock between these two important departments of government and account for a chaotic system of administration. There is little guarantee that the Legislature will enact laws in response to the wishes of the Executive. The Executive being irresponsible to the Legislature, remains in office till the expiry of its term. Again, the independence of the Executive heads has an attraction and the struggle between candidates often creates disturbance of a serious nature and endangers the safety of the State.

The Presidential system leaves the fate of the nation more to chance than does the Parliamentary system. The administration of the country is left in the hand of the President and if he be lacking in the qualities of an able administrator there is none to supply

the deficiencies. He remains in office till the expiry of his term of office and administration suffers greatly for his faults. The position is otherwise in a Parliamentary government where an inefficient prime minister may be easily aided by his efficient colleagues in the satisfactory determination of policy of administration and peaceful execution thereof.

Sec. 11. Bureaucratic vs. Popular Government.

The Bureaucratic government represents a type of government in which the responsible posts are occupied by persons who have obtained special training for that purpose and whose ability to govern has been tested by examination. Those persons remain in office during good behaviour and retire on pensions. In such a form of government the administrators are persons who have made the public service a profession of their own and want to devote their time and energy to the public service for pecuniary gains. Bureaucracy made its first appearance in France where on account of the constant changes in ministry the administrative business was practically controlled by a body of trained officials known contemptuously as the Bureau. This system is marked by the following characteristics :—(a) Centralisation of Control and Supervision, (b) Allotment of work to different officials, (c) Appointment of officials in a hierarchical order on the basis of approved qualification, (d) Safeguards for service, (e) Keeping of records and file, (f) Secrecy, (g) Red-tapism and strong attachment to routine work and (h) Absence of any party bias. This form of government exists to-day in varying degrees in almost all the monarchical states and in some of the republican states. The government of India may be termed as bureaucratic because here the posts of responsibility are occupied by those who have passed the civil service examination.

This system of government is to be distinguished from popular government which means government by persons who are chosen from the ranks of the people and while rendering their services to the community for a period of time are engaged in other occupations. These people generally come to govern the country not because they can acquire wealth thereby but because it is their duty as citizens to render their services to the country. The Bureaucratic government is undoubtedly the best form of government if the efficiency of administration is the sole end of government. The officials under this form of government are to obtain special training and to pass the civil service examination before they can enter public service ; in popular government there is no guarantee that the administration will be highly efficient. The chief defect of the Bureaucratic government lies in the fact that it gives no opportunity to the people to get political training and cannot stimulate

their interest in public affairs. Thus this form of government is not favourable to the growth of patriotism, self-reliance or loyalty. Again, the public officers who make the public service their profession attach greater importance to the routine work and will not deviate from it although such deviation may contribute to the welfare of the country. Thus John Stuart Mill aptly remarks "the disease which afflicts Bureaucratic government and of which they die is routine". The popular government, on the other hand, is free from the defects referred to above.

Sec. 11(a). The Republican Government.

A Republican Government is a form of government in which all governmental powers emanate from the people and are exercised by persons who are chosen by the people either directly or indirectly. The chief Executive head in a Republic must be elected by people and hold his office during their pleasure, for a limited period or during good behaviour. In this respect a Republic differs from a monarchical form of government where the chief executive head is determined by an accident of birth. A distinction may also be drawn between a Republic and a Democracy but as a Republic is generally based upon democratic principle the distinction is one of degree and not of kind. In a Republic the entire body of citizens choose by means of election a small number of citizens who are authorised to wield the governmental power. The principle of representation is, therefore, based upon a more extensive suffrage than in an ordinary democracy. Secondly, republican form of government can work more satisfactorily in a wider area with a larger population.

What is
Republican
form of
government.

Distinction
between a
Republic and
a Democracy.

Questions and Answers

Q. 1. Estimate the strength and weakness of Democracy as a form of Government. Democracy is the cult of incompetence. (C. U. 1933), (Ag., 1943, All., 1944).

Ans. See Sec. 7.

Q. 2. What is Aristotle's classification of states ? How would you proceed to classify them in modern times.

Ans. See Secs. 2 and 4.

Q. 3. Discuss the essential features of Cabinet System of Government as it obtains in Great Britain. (C. U. 1935).

Ans. See Sec. 8.

Q. 4. What do you mean by Democracy ? Whatever may be the weakness of Democracy and they undoubtedly exist, it seems, destined to become universal ?—Discuss the statement. (C. U. 1936).

Ans. See Sec. 7.

Q. 5. What are the distinguishing marks of the Presidential system of government ? In what respects does the system differ from the Cabinet System ? (C. U. 1936).

Ans. See Secs. 8 and 9.

Q. 6. On what principle should States be classified ?
(Punjab, 1938).

Ans. See Sec. 4.

Q. 7. Distinguish between the Federal and Unitary state.
(Bombay, 1936).

Ans. See Sec. 4.

Q. 8. What are the essential conditions for the successful working of democratic government ? (I. C. S. 1935).

Ans. See Sec. 7(a).

Q. 9. State the principal arguments in favour of Democracy. How do you account for its present eclipse. Account for the recent reaction against democratic form of Government (Nag., 1942, Punj., 1935, Bombay, 1941).

Ans. See Secs. 7 and 7(b).

Q. 10. Write a short essay on Democracy showing its merits and defects. (C. U. 1943, 1948).

Ans. See Sec. 7.

Q. 11. Discuss the aims and ideals of Totalitarian states. How far do these ideals differ from those of Democratic states.
(C. U. 1944).

Ans. See Sec. 7(b).

Q. 12. Discuss the merits and demerits of the monarchical Government. Is this form of Government likely to disappear altogether ? (Punj., 1936).

Ans. See Sec. 5.

Q. 13. Do you think that dictatorship is a satisfactory alternative to democracy ? (Ag., 1939).

Ans. See Sec. 7(d).

Q. 14. Critically examine the respective merits and defects of bureaucratic and popular Government. (C. U. 1946).

Ans. See Sec. 11.

CHAPTER V

THE COMPOSITE STATE

Sec. 1. Distinction between Simple and Composite States.

The State may be either simple or composite in character. In a Simple or Unitary State there is one supreme governmental organisation; there may exist local governments, but they derive their power from the Central Government which is supreme and can modify their power whenever it pleases. In other words, the local governments in a Simple State are mere administrative subdivisions and do not enjoy any legal autonomy. Thus the whole of the United Kingdom constitutes one Simple State because all the local governments that exist in the different parts of it derive their authority from, and are ultimately subject to, the Central Government. The Composite State, on the other hand, means a union of a certain number of States which, though not individually sovereign, have independent internal organisations. The members of the Composite State possess some of the characteristics of the State and are roughly described as State because of the wide autonomy which they enjoy. These Composite States are of three principal kinds, viz., (1) real union, (2) the federation, and (3) the confederation. The Unitary or Simple States may combine to form personal unions without sacrificing their independence.

Sec. 2. Personal Unions.

When two States having independent organisations come to have a common sovereign, they form a personal union. Each of the associated States has the same reigning sovereign and in other respects each is completely independent of the other. The states have separate constitutions and the existence of a common sovereign does not affect their relation; in fact the sovereign though physically the same person, has legally speaking two distinct personalities and enjoys in each State different powers. If as a ruler of one State he declares war with a third State, the other State of the union may remain neutral. Thus in international relation each retains a distinct personality.

These personal unions may be effected by the choice of the same person as ruler by the two States, by the operation of the laws of succession which happen to fix the crown upon the same person or by any other casual circumstances. The union thus effected continues so long as the same person wears the crown in both the states. In history we find

How these unions are formed.

many examples of such personal unions. The Union of England and Hanover from 1714-1837 was one of that character and continued till the accession of Queen Victoria whom the laws of succession in Hanover did not allow to wear the crown.

Sec. 3. Real Union.

The real unions are to be distinguished from mere personal unions. In fact they are personal unions and something more. The component states of a real union have no doubt the common ruler, but this existence of a common ruler is not the bond of union. There must exist a common organisation for the promotion of certain common ends. The individual states have separate organisations for the administration of local affairs but create a common organisation which will control the international affairs and certain other matters of common interest. According to Jellineck it is a "special form of confederation which results from the legal union of two or more independent states for common protection under one and the same personality who acts as the common bearer of the power of the component members, though each retains its sovereignty." The most notable example is the old union between Austria and Hungary. In this union the Emperor of Austria was also the king of Hungary. Besides this union through the same reigning monarch, the two States were further united through a common legislative organ for certain purposes. There were also certain common organisations to administer foreign, military and naval affairs. The delegations were nominated by the legislatures of the States and they were to decide the requirements of the common services ; again, it is to these delegations that the ministers in charge of foreign affairs, war and finance were responsible.

* Sec. 4. Confederation : Federation : Alliance.

By Confederation we mean a union of independent states for the promotion of certain common ends. The states do not give up their sovereignty but agree for their common advantage to administer certain affairs of government by a common organisation. The union thus existing between the independent States is intended to be permanent ; but the individual States, independent as they are, can withdraw themselves at their sweet will and pleasure. In a Confederation no one State is created but it represents a mere association of States which enjoy sovereign power and for that reason cannot be regarded as mere administrative subdivisions. The States create a common central organisation in which each of them has its

It means a union of independent States for certain purposes.

representatives. The resolutions of the Confederation thus created are not binding upon the citizens directly but are addressed to the State organisations which can enforce the resolutions upon the people if they like to do so.

We find in history many such associations of independent States. They were numerous among the ancient Greeks. The union in some of these confederations was more intimate than in others. The Achaean League which was the result of the conquest of Greece by Alexander the Great represented a type of confederation which was highly developed in respect of organisation that it might be regarded as federation. In ancient times such confederations were also present in Italy.

Confederations are to be distinguished from Federations. In a Federal organisation the component members of the Federal union give up their sovereign power and form one State while in a Confederation the individual States retain their sovereignty and can legally secede from the union whenever they like. In the words of Garner "the members of a Confederation are real States, not mere administrative circumscriptions with a limited autonomy and their relations to one another are of an international character". On the other hand the Federal union is one State. It is not an association of independent States inasmuch as the independent States must lose their sovereignty when they become members of the federal union. The members do not retain sovereignty and for this reason cannot legally withdraw themselves from the union. The members are not States in the proper sense of the term. Hence the union cannot be termed as a band of States connected by internal agreement. The component members enjoy considerable autonomy over local affairs and their powers are restricted by the constitution. This is the reason why a rigid constitution is necessary in a Federal union.

In a Confederation there is no dual citizenship. The confederation has no concern with the citizens who owe allegiance to the States only.

By alliance we mean a friendly relation between States. The States concerned do not form any common Government. They merely agree to co-operate in regard to certain matters of common concern. Such an alliance was formed during the last great war between England and U. S. A.

• Sec. 4(a). Essential elements of Federation.

A Federation is characterised by the following essential elements :—

(1) *A Union of States* :—Federation contemplates a union among several States which for the promotion of national, political and commercial interest agree to form a new State by the union and transfer their sovereignty to it. The States concerned give up their sovereignty and yet retain their autonomy in matters of local administration—an autonomy which cannot ignore the limits set up by the constitutional provision.

(2) *Supremacy of the Constitution* :—In a Federation the constitution plays an important part inasmuch as it has to divide the governmental powers between the Union government and the State governments. Such a clear-cut division is possible only when the constitutional provisions are set forth in a document.

(3) *Demarcation of Powers* :—Constitution must clearly define the powers to be exercised by the Union government and the State governments respectively.

(4) *Existence of the Supreme Court* :—Demarcation of power will be useless unless there is an authority to check the excesses of the Union Government or of the State Governments. Every federation must therefore provide for a Supreme Court with authority to decide finally any conflict between the Union government and State governments in the exercise of their respective functions.

(5) *Double citizenship* :—A citizen in a Federal union has two-fold allegiance—(a) allegiance to the Federal State in respect of certain matters and (b) allegiance to the State in which he lives. The one allegiance is national and the other local. The extent of each of this allegiance is definitely laid down in the constitution.

• Sec. 5. Conditions essential to Federation :—How far do they exist in India ?

The object of federalism is to reconcile national unity with the maintenance of the peculiar rights of the States. The individual States desire to attain a national unity and this is scarcely possible if the component States are widely separated from one another. Geographical contiguity is therefore an essential condition. The component States must exist in the vicinity of one another so that they may easily participate in the affairs of the Federal government. Thus federation has been a success in the United States of America, because the component States are contiguous to one another. Such federation can never be successful in the whole of British Empire, because the different parts of it are widely separated from one another. The provinces and the Native States of India fulfil this condition and the scheme of

(1) Geographical contiguity is an essential factor.

Federation which the ruling authorities outlined in the Government of India Act, 1935 claimed justification on that ground.

The next essential condition of federalism is the sameness of language, religion, culture and interest. The component States must contain people who speak the same language, who have attained the same stage of civilisation and culture, who have a common racial origin, common customs, traditions and interest. In fact the essential characteristics of nationality must be present before the smaller States can form a larger one. The United States of America shows clearly the importance of federal organisation. India on the other hand contains people who can be conveniently grouped under different communities speaking different dialects and having different religious and cultural interests. A federalism will utterly fail to make a compromise of these hostile interests and cannot, therefore, be successfully introduced in India.

(2) Other essential conditions—sameness of language, religion, culture and interest.

The third essential condition of federation is the federal sentiment. People must appreciate the utility of such federation and earnestly desire to form such federal union among themselves. This sentiment is absent in India.

(3) Federal sentiment.

The fourth essential condition of federation is the political ability of the people. People who want federal union must have sufficient political ability and administrative faculty. Thus we find that people who are still in infancy so far as political training is concerned cannot successfully adopt such a form of government. The Indians do possess such ability.

(4) Political ability of the people.

The last essential condition of federalism is the equality among the units. The component States must have equal rights and privileges. Such equality among the units of a federal union will surely create a wholesome atmosphere and prevent local jealousy which is sometimes found to weaken the central organisation. This condition cannot be fulfilled by units which will compose the Federation in India. The ruling princes and the provinces do not possess identical range of administrative powers and have not equal rights and privileges.

(5) Equality among the units.

Sec. 5(a). The position of Component States in a Federal Union.

The Federal union is the outcome of an agreement among the component states which give up their sovereignty but

retain certain local autonomy. The state governments must be given independent authority so far as the administration of local affairs is concerned. This necessitates a written constitution which definitely lays down the powers of the Central as well as of the local governments.

The individual states of a Federal union are not states in the proper sense of the term. They cannot, scientifically speaking, be designated as States because they do not possess the most important characteristic of State viz., the sovereignty. The sovereignty is not located in the component State but is located in body of persons that can amend the constitution. The powers of the local government are restricted by the constitution and the component states must exercise their powers according to the laws of the constitution. The Central Government is also given a limited control over the State governments. In the United States the Central or National government is to see that the individual States maintain a republican type of government. It should be remembered that the State governments never derive their power from the Central government. They are independent of the Central government and can exercise their power within their own domain so long as the constitutional rules are not violated.

Sec. 5(b). Division of Powers in a Federal Government.

The division of powers between the Local and Central governments has given rise to two types of federal constitution viz., (1) The American type, and (2) The Canadian type. In the former viz., the American type, the constitution definitely lays down the powers of the central government and authorises the local government to exercise those powers which do not either in strictness or by implication belong to the Central government. The Canadian type, however, has adopted a policy which is just opposite to that followed in the American type. The powers of the local governments have been strictly defined while the Central government is authorised to exercise the remaining powers. The Canadian type of federal constitution has thus widened the jurisdiction of the Central government. In modern times we find a tendency to bring more functions under the supervisions of the Central government but the actual management has been left to the local government. Generally speaking, the affairs of common concern such as railway, postal services, military services and coinages are made over to the central government for administration. On the

other hand all matters of local importance come under the control of the local or state governments. These comprise education, sanitation, irrigation, police and such other subjects which are purely matters of local concern. In the United States of America the Congress has been empowered by the constitution, to coin money, to establish post offices, to raise and support armies, to maintain Navy, to make laws for the proper execution of the powers and to raise money by way of taxation and loan.

Sec. 6. How Federal Unions are organised :

There are two ways in which Federal Unions are formed. First, a federal union may be formed when a number of independent states agree among themselves and adopt a federal organisation for their convenience. Secondly, a federal organisation has sometimes been the outcome of a unitary State in which the Central government withholds its control over the local governments and both the Central government and the local governments come to derive their power from the constitution. In 1889 the Empire of Brazil adopted this latter method and the then Unitary form of government was replaced by a Federal form of organisation.

Two different ways in which Federal unions are formed.

Sec. 7. The Location of Sovereignty in a Federal State.

The writers of political science differ in their opinions regarding the location of sovereignty in a Federal State. According to one school of writers it is located in the sumtotal of the law-making bodies in the Federal and State governments. The theory of the location of the sovereignty rests on a confusion between the State and the government. The sovereignty is an attribute of the State and not of the various organs of the government which share in the expression of the will of the State. They express the will only because of the sovereignty of the State. According to another school, sovereignty is located in the Federal government in the same sense as it is located in the State governments. This view is entertained because the Federal government is found to have autonomy in certain spheres while the State governments have autonomy in others. This view of dual sovereignty has received the approval of such eminent constitutional writers as judges Cooley and Story and political writers like Tocqueville, Hurd and many others. This theory, however, is opposed to the conception that sovereignty is incapable of division. A federal

Sovereignty is located in the sum-toal of law-making bodies.

It is located both in the Federal Government and in the State Govt.

union makes one and only one State. The component parts of the federal union lose their sovereign or supreme power as soon as they become members of the federated union. The constitution confers distinct governmental powers upon the various administrative units of government. If we call this delegation of power a division of sovereignty, we fail to distinguish State from government.

There is yet another view which has found many supporters. According to this view sovereignty is located in the body which has legal power to amend the constitution and to dissolve the union altogether.

Sec. 7(a). How Federation in Canada differs from that in Australia.

Federation in Canada differs from that in Australia in the following points :—First, in Canada the constitution enumerates the power of the States and leaves the residue to the union for administration while in Australia the Federal authority has its power strictly defined by the constitution and the States are given to enjoy the residue. Secondly, the Dominion government in Canada exercises certain control over the provincial organisation by vetoing state legislation and appointing provincial Governors while the Commonwealth Government in Australia has no right to interfere in the executive and legislative spheres of the component States. Thirdly, the Dominion government has the right of nominating members of the Senate, while in Australia the members of the Senate are elected by the States. Fourthly, the Supreme Court in Canada has only a limited right of interpreting the constitution, while the power of the Supreme Court of Australia in these matters is absolute. For the above reasons it has been rightly said that governmental organisation in Canada is more unitary than federal in character.

Sec. 8. Advantages of Federal Government.

We are aware of the well-known maxim "union is strength". The Federal Government can claim all the advantages that union of several smaller States brings with it ; again, this union does not mean destruction of local autonomy inasmuch as federalism combines the advantages of national unity and strength with those of local independence. The citizens are to participate in the administration of their States and take increasing interest in the management of their own affairs. Over and above the political gain there is an economic advantage which can never be exaggerated. In a Federal

Federalism
combines
national
unity with
local inde-
pendence.

Government matters of general concern are left to the Central government for administration. The component States have not to incur separate expense for the administration of central departments. This large-scale management avoids useless duplication and at the same time secures all the advantages of uniformity in the regulation of affairs of general concern. Again, federalism is the best contrivance by which small States can preserve their dignity and escape from foreign subjugation. It prevents the growth of central despotic power and at the same time diminishes the danger of rebellion by affording the local governments opportunity to manage their own affairs. In the words of Dr. Garner it "furnishes the means of maintaining an equilibrium of centrifugal and centripetal forces in a state of widely different tendencies."

Federation has one more advantage. It brings under one union a number of States and thus avoids the chance of hostility and spirit of aggression with the devastating consequences.

✓ Sec. 9. Disadvantages of Federal Government.

We have already discussed the merits of federal form of government but federalism cannot claim immunity from the weakness that is inherent in it. Bryce sums up the faults of federal government as follows :—

(1) Weakness in the conduct of foreign affairs.

(2) Weakness in the home government, that is to say, deficient authority over the component States and the individual citizens.

(3) Liability to dissolution by the secession or rebellion of States.

(4) Liability to division into groups and factions by the formation of separate combination of component States.

(5) Want of uniformity among the States in the legislation and administration.

(6) Trouble, expense and delay due to the complexity of a double system of legislation and administration.

(1) The first weakness appears prominently in the United States where the component States are found to embarrass the Federal government in enforcing the treaty obligation in respect to aliens residing within the United States. Again, the conduct of foreign affairs requires a promptness which can scarcely be found in a federal type of government.

(2) The internal administration is also weak because of the division of power between co-ordinate authorities and the restriction which constitution imposes upon the State governments.

(3) The third weakness is due to absence of a central despotic power in a federal form of government. The component states have separate governmental organs and enjoy considerable autonomy in local affairs.

(4) This weakness follows from the preceding one. It is quite evident that when a state has to cut off its connection with the federal government it will try its utmost to persuade others to co-operate with it in the act of secession.

(5) Variety of legislation in respect of commerce and transportation, marriage and divorce, labour and industries creates difficulties and tends to weaken the habit of obedience to law. As society becomes complex in character, a greater uniformity is required in the matter of legislation and administration.

(6) The double system of administration which is the characteristic feature of federal government has been responsible for the needless duplication of administrative machinery, conflict of jurisdiction between the national and State authorities, useless expenses and unnecessary delay.

In spite of the above faults of Federal Government, its merits far outweigh these faults and we cannot but agree with Sidgwick in his conclusion that extension of federation is the most probable of the political prophecies relative to the form of government.

Sec. 9(a). Modern expansion of Central Authority in Federation : The reasons for expansion.

In modern times we find an unceasing endeavour on the part of the central authority to assume more and more powers. There are two modes of expansion of central authority. The Union government may expand its authority by what is known as the Doctrine of concurrent jurisdiction. This doctrine recognises over the same spheres but at the same time imposes a limitation on the power of the State governments by prohibiting any State measure which affects any federal law. This doctrine of concurrent jurisdiction has been introduced in the federation and has found recognition in the New Indian Constitution.

Another doctrine which helps the expansion of central authority is the doctrine of 'implied powers'. This doctrine has been applied by the supreme court of America which has taken advantage of the brevity of constitutional provisions and inter-

puted the same in favour of the central authority. In this way the Union government has been associated with many new powers which have not been expressly conferred upon it by the constitution.

The reasons why in modern times there is a tendency for expansion of the Federal Government are not far to seek. The Federal Government has exhibited the strength of organisation which union of several States naturally brings with it. When fruits of complete union have been enjoyed by the component States, the necessity of common administration in extended sphere is keenly felt. Again, in the economic sphere the necessity of concerted and united activity of the component states is fully appreciated. The States combine to attain self-sufficiency in the matter of procurement of essential commodities and some sort of federal control is urgently called for in the economic sphere.

This inherent tendency for expansion of federal activity has been aided by the improvement of the means of communication which has gone a great way in annihilating the distances between different States. The imperialistic tendency of modern times has complicated the problem of defence and necessitated consolidation of military activities under the rigid control of the Federal Government.

Sec. 10. Part-Sovereign States.

There are certain communities which enjoy autonomy over local affairs but do not possess sovereignty in the true sense of the term. These communities are called States only by courtesy. Sovereignty is the essential characteristic of the State and a community which does not possess this characteristic cannot scientifically be designated as a State. Hence, some writers describe such communities as part-sovereign States but this designation cannot claim scientific accuracy inasmuch as it is based upon an assumption that sovereignty is capable of being divided.

The part-sovereign States include the following types of communities viz., (1) The component members of Federal union, (2) Communities which are known as Protected States, (3) Suzerain communities, and (4) States under mandates.

We have already seen how the component members of a federal union lose their sovereignty from the date of the union. They generally have autonomy so far as the local affairs are concerned. Hence they are called part-sovereign States.

Component
States in a
Federal union.

The protected States include those communities which on account of their weakness place themselves under the protection or guardianship of a more powerful State by handing over to the latter the management of their more important foreign relations. They are quite helpless and cannot avoid foreign subjugation without the help of a more powerful State. The protected States however, retain the residuary powers and for this reason they are designated as part-sovereign States. Many of these protectorates e.g., Zanzibar, Somaliland, the East African protectorate are under the control of colonial office. Another form of part-sovereign State is the Suzerain community ; such a State comes into existence when a community acquires certain independent power by virtue of delegation of those powers by the paramount State. It is entitled to exercise the powers delegated to it and is subject to paramount State in other respects. The paramount State is known as Suzerain State, while the State which is dependent upon it is called a Vassal State. Bulgaria was a vassal State till it declared its independence and ceased to be controlled by Turkey.

The States under mandate are placed under the tutelage of some more powerful States so that they may be benefited by their administrative advice and acquire sufficient strength to stand by themselves ultimately. This mandatory system came into prominence as a result of the First Great War of 1914. The League of Nations had control over the administration of these territories which included the Tanganyika Territory, South East Africa, the Camaroons and Togoland, and its authority was delegated to one State or another which was willing to undertake the responsibility and act as its agent or mandatory. The mandatories, who came forward to take this sacred trust of civilisation included Great Britain, France, Australia, New Zealand, Union of South Africa and Japan. The territories which were reduced to the position of mandates cover mainly the African and Pacific possessions of Germany and certain portions of the Ottoman Empire. The States which are thus under a mandate are not strictly speaking, sovereign States. The last war was the outcome of a demand by Germany to get back the territories which formerly formed part of the old German Empire and then were placed by the League of Nations under the tutelage of advanced nations.

Sec. 11. The League of Nations.

The League of Nations represents an International Club of several sovereign and part-sovereign states. It was created on January 10, 1920 with a view to

Object of
the League.

promoting international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honourable relations between nations, and by obeying all international treaties.

The League of Nations lays down in its covenant thirty-six articles the first of which contains the conditions of admission into the League and of withdrawal from it. The original members of the League were the Ally signatories of the peace treaty and the newly created States and the States invited to join it.

Covenant
contains
36 Articles.

Originally the League was started with a membership of 18 states but gradually its membership rose to 56.—It once embraced all the independent states of the world with the exception of U. S. A., Russia, Italy, Germany and Japan. Even the self-governing Dominions and India were members of the League. Once a State became a member of the League it was on a footing of equality with all other members in respect to its right and obligations. No member could withdraw from the League without fulfilling its obligations under the covenant as well as all its international obligations and without giving two years' notice to withdraw. The membership of a State in the League was also lost when it signified its dissent to a duly adopted amendment to the covenant or when it violates any covenant of the League.

The League had four distinct organs : (1) The Assembly, (2) The Council, (3) The Permanent Secretariat, and (4) The Permanent Court of International Justice. The Assembly consisted of official representatives of all the members of the League, including the self-governing Dominions and India. The Assembly dealt with all questions relating to the League and the appointment of the Secretary-General requires its approval. Unanimity was insisted on in all decisions except in certain union matters.

The Assembly was too large a body to conduct smoothly the affairs of the League. This was the reason why the Council which was a smaller body became necessary. The Council consisted of 14 members of whom four represented the principal powers having permanent seats in the Council and the rest were elected from time to time to represent the other members of the League. The Council dealt with all matters affecting the peace of the world. Its decisions should be unanimous except in certain matters specified in the covenant. The Council was entrusted with the executive work of the League and used to control the affairs of the League Secretariat.

The Council
of the League.

The Permanent Secretariat consisted of the Secretary-General and his staff. He is appointed by the Council but his appointment

required the approval of the Assembly. The Secretariat was the custodian of all records and was in charge of official correspondence. The expenses of the League were met by means of contributions from the members. India had to contribute 55 units out of the total of 1011 units.

The Permanent Court of Justice which was set up in compliance with the provisions contained in Article 14 of the covenant sat at the Peace Palace at Hague, to adjudge upon all international disputes which were referred to it from time to time. It consisted of eleven judges and four deputy judges elected jointly by the Assembly and the Council. It performed its judicial duties with reference to international convention and general principles of law.

Sec. 11(a). The Objects of the League and its Achievements.

We have already seen that the League of Nations existed for the promotion of international co-operation and achievement of international peace and security. The League realised these objects by means of covenant whereby the members of the League agreed to accord just and favourable treatment to the fellow members, to avoid war-fare and to refer to the permanent Court of Justice for the speedy settlement of international disputes. The League could enforce its decisions by threat of sanctions and expulsion from the League.

The League also took increasing interest in the non-political sphere. An International Labour Conference and an International Labour Office had been constituted on representative basis ; this conference which met at least once a year had to decide upon matters which vitally concerned the labourers and submit their decision in the form of draft convention or recommendations to the various governments for favour of according legislative sanction to them. The Government of India had been kind enough to ratify some of these conventions by passing a number of Factories Acts, Trade Unions Act, Payment of Wages Act and the Workmen's Compensation Act.

The League of Nations also established Health Committee with a view to co-ordinate research work to organize international campaign against infections, diseases and to maintain with the help of an official laboratory international standard for certain sera and principal vitamins.

Sec. 11(b). Why the League has failed to achieve its ends.

In recent times the League of Nations witnessed a colossal failure in enforcing its sanctions. When Japan occupied Manchuria,

the League intervened but its decision based on the Lytton Report did not carry any weight with Japan and the latter was bold enough to disregard the decision and to withdraw her membership. Similar attempt on the part of the League to enforce its sanction against Italy when the latter annexed Abyssinia, ended in utter failure. Japan attacked China without declaring war and Germany re-occupied Rhine Land. Italy seized Albania but the League lacked in power to check these aggressors.

Now it is high time to enquire into the causes which accounted for the colossal failure of the League of Nations in promoting international peace. At the very outset we find the League standing upon a foundation of sand. It attempts to enforce its decisions upon States which became its members and at the same time retained their sovereignty. No decision can be binding upon a Sovereign State because Sovereignty knows no limitation on its power. The result is that the League at once became a voluntary association of independent States which could withdraw their membership whenever the decision of the League affected their economic or political interest. Again, the object of the League in the matter of prevention of war could hardly be realised when it left uncontrolled a discontented nation whose African and Pacific possessions had been taken away and placed under the tutelage of 'advanced nations'. The League had for these reasons to disappear from international politics.

The League dragged on its existence till the commencement of the last Great War when its organisation ceased to exist.

Sec. 12. Universal State.

The modern political thinkers deal with the evils of national States and favour the substitution of these States by one universal State which will avoid international disputes and stand for general peace and prosperity. It will bring about uniform regulation in the sphere of industry and commerce. The sovereignty of the States will be ignored and people of the world will become the citizens of one State which is sovereign. The citizens will enjoy equal rights and privileges and have the same voice in the administration of the affairs of the State. It should be noted that establishment of a Universal State does not mean the abolition of local organisation. It is practically impossible to control the various people of the world by uniform laws. Uniformity no doubt is desirable in certain spheres such as commerce and industry but in matters of religion and education uniform regulations will produce serious consequences. Thus local organi-

It does not mean abolition of local organisation.

sations will still continue but their powers should be strictly restricted.

There are certain tendencies which tend to suggest that the Universal State may be established in future. The tendencies which suggest the establishment of such State in future, however remote, are classified by Prof. Gilchrist as (1) philosophical, (2) historical, (3) political, (4) commercial, (5) industrial, (6) legal, (7) moral, and (8) international.

Certain tendencies suggesting establishment of universal state.

(1) *Philosophical*. There are certain tendencies in human beings which lead them to form associations. They are found to form one association after another. The Universal State will be reached in the long run and it will be the most perfect stage of social development.

(2) *Historical*. History records many instances of attempts made by people in the past to organise themselves as a whole. The most important attempts are (1) the Empire of Alexander the Great, (2) The Roman Empire.

(3) *Political*. The tendency of the modern political world is that the independent States are very willing to form leagues and international associations with a view to establishing peace.

(4) *Commercial*. The facility of transportation has brought about an economic inter-dependence among nations and this economic inter-dependence fosters the spirit of co-operation and sympathy.

(5) *Industrial*. Uniform factory laws and international organisation of labourers are some of the tendencies which clearly indicate that people are conscious of the merits of international associations.

(6) *Legal*. The progress of international laws in modern times shows how far uniformity of laws is practicable and desirable.

(7) *Moral*. The moral tendency manifests itself in the steps that stronger nations take to remove the oppression to which weaker nations may be subject.

(8) *International*. With the spread of education people of various nations are interchanging their thoughts and are being profited by each other's knowledge. In this way people will in the long run form one cultural community with the result that conflicts will disappear.

International.

Sec. 12(a) Arguments against the Universal State.

People are not in the same stage of civilisation.

There are certain writers who do not favour the idea of Universal State on the following grounds :—First, such a State cannot be created inasmuch as it requires a universal mind as its basis. People of the world belong to different nationalities and have not as yet reached the same state of civilisation.

Secondly, the idea of a Universal State assumes a perfection in human beings which they have not yet attained; but in spite of their imperfection men can form such a universal state. The citizens will be controlled by the Universal State in the same way as by the modern States.

It cannot continue for a long period of time.

Thirdly, it is contended that a Universal State must be monarchy, otherwise it will not continue for a long period of time. But this contention is erroneous inasmuch as the progress of federal type of government shows that such a state may be practicable and successful if it has a federal type of organisation.

It will abolish individual liberty.

Fourthly, it is argued that the establishment of such a state will abolish individual liberty; but this contention also does not hold good because the organisation of the Universal State will not affect the ordinary lives of individuals. There will still remain the local organisations which will control the local affairs. The Universal State will have a separate organisation with the object of promoting the general interest of the people.

Sec. 13. The Imperial Federation.

The question of Imperial Federation has become a burning topic among political thinkers of the present time. This Imperial Federation has reference to the British Empire. It is suggested that the whole of British Empire which includes various colonies and dependencies can very well be organized as a federal type of government. The dependencies should enjoy local autonomy but at the same time there should be a central government which should control the general interest of the Empire. At present the central government does not represent the dependencies but controls their powers in a strict manner. This causes dissatisfaction and promotes ill-feeling among the dependencies. A federal type of organisation is sure to avoid these evils which are inherent in a unitary form of government. It will ensure the integrity and stability of the Empire. Again,

we find that co-operation of the various parts of the Empire is urgently necessary in the matter of Imperial defence and this co-operation can hardly be secured unless the dependencies are allowed to have some voice in the foreign policy of the Empire.

Let us now turn to discuss how far this federal organisation is favoured by the circumstances of the present time. There are certain parts of the Empire which contain population of the same race, language and religion as the people of Great Britain. These parts which include the self-governing dominions can with success form a federal union. There are certain other dependencies where the population no doubt differ in respect of race, language and religion but they are nevertheless desirous of Imperial unity for their defence against foreign aggression. Thus we see that federal sentiment is common to almost every part of the British Empire. Besides the sentiment of unity referred to above there are certain institutions which speak of close intimacy between the various parts of the Empire. The King-Emperor is the chief Executive head of the whole Empire. Though it is not possible for the king to be present in every part of the Empire still the executive functions are carried on in the parts where he is not present by his representatives and the acts done by the representatives are acts of His Majesty.

The different parts of the Empire have already combined for commercial purpose in order to protect their Imperial interests. This spirit of organisation will promote Imperial solidarity and help the framing of the Federal constitution.

There are several other institutions which have acquired prominence in recent times. Of these the most important are the Colonial conferences, the offices of the High Commissioners, the Secretary of State for Colonies, and the Committee of Imperial Defence.

Sec. 14. Arguments against Imperial Federation.

Theoretically speaking, the scheme of Imperial Federation may appear to be the best of all possible schemes for reconciling the interests of the Empire with that of the dependencies; but there are practical difficulties in the organisation of the whole Empire on federal principles.

First, federal organisation is scarcely possible in an Empire where the different parts are so widely separated from one another. Federalism demands geographical contiguity. The wide gulf that separates Canada, New Zealand, India and other dependencies from Great Britain makes common organisation almost impossible.

Federalism demands geographical contiguity.

Secondly, the British Empire contains population of diverse nationality. The people of India differ in race, religion and language from the people of the United Kingdom, Canada and Australia. Federalism can seldom progress in an Empire where there is a diversity of interest.

Population of diverse nationality.

Thirdly, difficulties will arise in the constitution of the Central government. The several parts of the Empire should be represented in the Central government but there will surely be a quarrel with regard to the number of representatives that each will send and the amount of contribution that each will have to make.

Difficulty in the constitution of the Central government.

Fourthly, England will lose much of her pre-eminence if the scheme is ever realised. At present the British Parliament controls the affairs of other parts of the Empire and it is, in fact, the only sovereign legislature that exists within the Empire. The organisation of the Empire on a federal basis will lead to the creation of a Central Legislature in which the dependencies will have representatives and England will have only a subordinate legislature of her own.

England will lose much of her pre-eminence.

Fifthly, the Imperial federation will have the effect of lessening the prestige of the self-governing dominions. The self-governing dominions enjoy considerable autonomy and the British Government seldom interferes with their administrative policies unless they are prejudicial to the Imperial interest. If federalism is introduced within the Empire, the dominions will be controlled strictly in certain matters by the Central government in which the voice of their representatives will not carry much weight.

It will lessen the prestige of self-governing dominions.

A clear understanding of the above objections against the scheme of Imperial Federation will lead to this conclusion that the scheme cannot successfully operate within the British Empire.

Sec. 15. World Federation : How far it is practicable.

We have already seen why the whole world cannot constitute one state ; but the world peace cannot be restored if the indepen-

dent States are allowed to pursue their selfish, ambitious and imperialistic projects. Some sort of world-organisation is urgently called for, otherwise the States will not give up their militant organisation to bring under subjugation the weaker States and extend their territorial possessions. There are certain tendencies which facilitate grouping of all States under one world-wide organisation. These include the revolutionary achievements in the sphere of communication, which have annihilated distances and promoted the growth of one international culture and civilisation. Self-sufficiency of the States has disappeared and in its place we find a wholesome spirit of interdependence. This cultural closeness and this economic interdependence, might have secured peace and prosperity for all nations but for the national sovereignty which stands in the way of concerted action and enables the State to violate the terms of any agreement for the materialisation of its selfish projects. A federal organisation, if feasible, will do away with national sovereignty which has been the source of so much trouble.

The scheme of world-federation cannot command support on the following grounds :—

(a) Absence of federal sentiments among the units will obstruct the organisation and the working of federation on efficient lines.

(b) In spite of revolutionary changes in communication, the distances which separate one state from another will create administrative difficulties of serious nature.

(c) The States which follow liberal democracy in the political sphere and capitalistic ideals in the economic sphere cannot combine with States which are organised on dictatorial and socialistic lines.

(d) The problem of representation in the Union government will create additional difficulties. If the representation is founded upon population basis India, Russia and China, which claim overwhelming population, will be entitled to a majority of seats. The powerful nations will not tolerate such a mode of representation.

For the above reasons we can safely conclude that world is not as yet fit for any organisation on federal lines.

Sec. 16. The Atlantic Charter : How far it will restore International peace and order.

At the earlier stages of the war Germany achieved monumental progress by subduing a number States of Europe. This success struck terror in the hearts of the Allies who came forward on 24th Sept. 1941, with the famous Atlantic Charter which purported to set up a new order in Europe by recognising the lost

rights of the vanquished as well as the existing rights of all peoples to shape their own government and to enjoy their territorial possession unhampered by the signatories of the charter. The object of this charter is to enlist the support and sympathy of the European powers who had already come under Fascist control. The charter aims at final destruction of the Nazism and restoration of a new order in which all States, great or small enjoy equal rights in the economic sphere to tap the resources of the world and traverse in high seas and oceans without hindrance. The charter emphasises the need for disarmament which alone can ensure permanent peace and security in the world. The charter rests upon the goodwill of the 26 nations who signed it and there is no guarantee that the powerful and the more ambitious nations will not flout its terms when occasion arises. Again, many powerful nations are not parties to the charter and it is quite uncertain when Nazism will disappear from the world.

PROTOCOL ON FRISCO CHARTER

The Frisco Charter was drawn up at the San Francisco conference. It is a charter by which the nations of the world would seek to maintain international peace and security, to develop friendly relations between nations and to promote international co-operation. The Big Five States (Britain, U. S. A., Russia, France and China) have been parties to the charter which has also been ratified by a majority of other States.

The signatories to the charter have agreed to pursue their objectives by taking collective action to prevent aggression and to settle international disputes.

The United Nations Organisation is to come into being immediately after the charter obtains the signatures of the big five and a majority of other States.

ORGANS OF THE UNITED NATIONS

Six main organs make up the United Nations. These include (i) The General Assembly, (ii) Security Council, (iii) Economic and Social Council, (iv) Trusteeship Council, (v) International Court of Justice and (vi) Secretariate.

(i) General Assembly : It is composed of all member States. Each member can send not more than five representatives on the Assembly. Each member has one vote. The General Assembly

meets once a year. Important questions are determined by a two-thirds majority and the rest by a simple majority.

(ii) The principal function of this Assembly consists in making recommendations on the principle of international co-operation towards the maintenance of peace and security, including the principles of disarmament and regulation of armament. It may also make recommendation for the peaceful settlement of any situation which might impair friendly relations among nations. It functions through six main committees :—

(a) Political and security, (b) Economic and financial, (c) Social, humanitarian and cultural, (d) Trusteeship, (e) Administrative and Budgetary, and (f) Legal.

(ii) Security Council : It is composed of five permanent members representing U. S. A., United Kingdom, U. S. S. R., France and China and six non-permanent members representing at present Argentina, Colombia, Belgium, Ukraine, Canada, and Syria. Each member of the Council is entitled to send one permanent representative.

Its functions include those for maintaining international peace and security, and for investigating disputes leading to international friction and for using economic or military sanction to prevent or stop aggression.

(iii) Economic and Social Council : It is composed of eighteen members elected by the General Assembly. It is concerned with the economic and social activities of the United Nations and insists on fundamental rights and freedom for all.

(iv) Trusteeship Council : This Council attempts to promote the sacred Trust accepted by the United Nations for promoting the well-being of dependent peoples.

(v) International Court of Justice : This acts as a court of law and deals with legal questions arising between the members. The Security Council may refer any legal dispute to this court. It consists of fifteen judges elected by the General Assembly and the Security Council.

(vi) Secretariate : It is composed of a Secretary-General and his staff. The Secretary-General is the chief administrative officer of the United Nations.

Questions and Answers

Q. 1. How does a federal union differ from an alliance, a confederation and a unitary state ? (C. U. 1940).

Ans. See Sec. 4.

Q. 2. Discuss with special reference to India, the conditions which favour a federal rather than unitary system. (Bom. 1941).

Ans. See Sec. 8.

Q. 3. Compare and contrast a federation with a confederation and give examples of both. Distinguish carefully between the two main types of federation. Would you advocate a federal type of Government for India? If such a form be adopted for India which of the two main kinds of federation would you prefer? (C. U. 1930, 1947; Patna, 1925; Rangoon, 1939).

Ans. See Secs. 4 and 4(b) which deal with essential conditions of federalism and show how far these conditions are absent.

Q. 4. Describe the character of true federal union. In what respects does such a union differ from a confederation? Illustrate your answer. (C. U. 1935).

Ans. See Sec. 4.

Q. 5. What are the conditions essential to the success of a federal union? How far do they exist in India? (C. U. 1939).

Ans. See Sec. 5.

Q. 6. Compare and contrast the Canadian and American forms of federation estimating the success of each. (Punjab, 1938).

Ans. See Sec. 5(b).

Q. 7. Describe the principles on which powers are distributed in a federation between the federal state and the constituent units. (Patna, 1934).

Ans. See Sec. 5(b).

Q. 8. Describe the constitution and functions of the permanent court of International Justice. (Nagpur, 1935).

Ans. See Sec. 11.

Q. 9. Give a short account of the non-political activities of the League of Nations. (Pat. 1934).

Ans. See Sec. 11(a).

Q. 10. Write a short essay on the constitution, functions and work of the League of Nations. (I. C. S. 1934; Bom. 1937).

Ans. See Secs. 11 and 11(a).

Q. 11. Explain the principles and methods of the distribution of powers between a federation and its units in a federal form of Government. (C. U. 1942).

Ans. See Sec. 5(b).

✓ **Q. 12.** Discuss the characteristic of a federal government. Illustrate your answer by reference to the U.S.A. (C. U. 1946).

Ans. See Sec. 4(a).

CHAPTER VI

SOVEREIGNTY

Sec. 1. Sovereignty—a Distinctive mark of the State.

The term 'sovereignty' is derived from the Latin word '*superanus*' which means supreme. It is the essential characteristic of a State. There are various associations in this world but all these associations do not enjoy sovereign authority over its members. The State enjoys supreme power over its citizens and subjects and can enforce obedience to its laws and regulations. Burgess defines sovereignty as 'the original, absolute and unlimited power over the individual subjects and over all associations of subjects, it is the underived and independent power to command and compel obedience'. There is no legal restriction upon the sovereign power of the State. The State which has this sovereign power can do whatever it pleases. When a country has its laws and regulations controlled by another country it cannot be designated as State because it has not that sovereign or supreme power which is the distinctive mark of the State. Similarly, the dominions which enjoy limited autonomy do not possess any such power. India now enjoys Dominion Status.

Sec. 2. Various Aspects of Sovereignty.

The sovereignty of the State may be studied from different points of view. We are familiar with the well-known distinction between legal sovereignty and political sovereignty. Legal and Political sovereignty. The legal sovereignty gives us the lawyer's view of sovereignty of the State. According to the lawyers the sovereign power of the State means the authority which expresses the will of the State in the form of laws and enforces obedience of the subjects to them. The legal sovereignty, therefore, means the supreme law-making authority in a State. Dr. Garner describes it as "the determinate authority which is able to express in a legal formula the highest command of the State; the power which can override the prescription of the divine law, the principles of morality and the mandates of public opinion." In Great Britain the legal sovereign is the King-in-Parliament which has power to do whatever it likes.

The other expression, viz., "the political sovereignty" implies the power that lies behind the legal authority and controls its commands. The will of the people influences legislation greatly, because it will be physically impossible for the legal sovereign to

enforce obedience to laws if they are not supported by the people of the State. Thus we see that a legal sovereign, though its power is unlimited, cannot ignore the will of the people. This will of the people is the political sovereign of the State. It should be remembered in this connection that the expression of this will does not make law except in the case of a direct democracy but indicates the type of law which public opinion demands.

There is another expression which is often used. This is popular sovereignty which means the power of the masses as distinguished from that of an individual ruler or of the classes. With the growth of democracy the theory of popular sovereignty has a large body of supporters. The right to participate in the affairs of the State is now claimed by the people as their birth right. Every State has been forced by circumstances to extend franchise with the result that the real source of authority now lies with the mass of population i. e., with the majority of voters.

Popular
sovereignty.

The sovereignty of the masses has no definite meaning in practical politics. Even in modern democratic States there are many who do not enjoy the right of franchise. Although attempts are being made to recognise this aspect of sovereignty through the use of referendum and initiative there is as yet no satisfactory relation between the masses and the government. Again, people have no legal right against the State. They must obey the existing government and try to bring reform by constitutional means.

Mass sove-
reignty has no
definite mean-
ing in practical
politics.

Sec. 2(a). Distinction between *De jure* Sovereignty and *De facto* Sovereignty.

By *de jure* sovereignty we mean a supreme power which is by law entitled to enforce obedience from the subjects and citizens. In every State we find a person or a body of persons whose right to obedience has its foundation on law. He may not have sufficient physical strength to exact obedience from the people, but nevertheless the people will obey such authority because the law of the country has conferred upon him a sacred right to govern. A *de facto* sovereignty on the other hand rules by virtue of superior physical or moral force. He may be a military dictator whose order goes unchallenged, a spiritual priest whose claim to obedience is based upon spiritual force, or a self-constituted assembly which has come into power and can compel obedience. The law of the country does not recognise him as sovereign but he expels the legal sovereign and exacts obedience

De jure
sovereign or
legal
sovereign.

from the people by the supreme force that he possesses. The *de facto* sovereign therefore is the actual sovereign—a sovereign who actually controls the people though he is not legally entitled to control them. Sometimes we find that the *de facto* sovereign obtains in course of time a legal status in the same way as actual possession in private law ripens into legal ownership through prescription. Ultimately that right will prevail which is accompanied with might. A *de jure* sovereign can seldom maintain his right to command obedience if he has not sufficient strength to drive away those who come to usurp his sovereign right. If the *de facto* sovereign establishes himself by expelling the legal sovereign, new laws will be framed to give him a legal status. The Bolshevich regime in Russia had in the beginning no legal basis but gradually it obtained a legal status and is now recognised by foreign governments.

Austin cannot tolerate this distinction between *de jure* and *de facto* sovereignty. According to him sovereignty is always *de jure* because the will of the sovereign is law. A government on the other hand may be either *de jure* government or *de facto* government.

Sec. 2(b). Distinction between Titular and Actual Sovereignty.

A titular sovereign means a sovereign who is designated as such but who does not actually exercise the sovereign power. Such sovereigns are nominal figure-heads without any real power. The king of England is a titular sovereign because the real sovereign powers are exercised not by him but by the Parliament. Of course his assent is required in every bill that is passed by both the Houses of Parliament, but the king never refuses to give assent whenever the two Houses agree in the passing of a bill.

Sec. 3. The Attributes of Sovereignty.

The characteristic attributes of sovereignty may be described as follows :—(1) Absoluteness, (2) Permanence, (3) Inalienability, (4) Exclusiveness, (5) All-comprehensiveness, and (6) Indivisibility.

(1) *Absoluteness* is the most important characteristic of sovereignty. Sovereignty implies a supreme power which does not bow down to any other higher power in this world. This is so when sovereignty is looked at from the legal standpoint. In the legal aspect of it the sovereign power knows no limit ; it can make and unmake any law it pleases. This absoluteness however

exists only in theory but in practice sovereignty will have its absoluteness greatly reduced. The sovereign power in its absolute form belongs to the State and it is for the government to exercise this sovereign power. When the government comes to exercise it, the power must be adapted to the environment.

(2) *Permanence*—The sovereignty is the essential characteristic of the State and continues so long as the State itself exists. So intimately it is connected with the State that we may briefly describe the relation in the following manner :—no State, no sovereignty ; no sovereignty, no state. The sovereignty of the State does not cease with the death or dispossession of a particular man that bears it or with the dissolution of a particular chamber by which it is exercised.

(3) *Inalienability*—The State cannot alienate its sovereign power ; when it does alienate its sovereign power it cannot be designated scientifically as State. According to Lieber, the well known American writer "sovereignty can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life or personality without self-destruction". We should not, however, think that this attribute of sovereignty makes cession of a part of the territory by the State impossible. The State may cede a part of its territory but that does not mean that it has ceded its sovereignty as such. Of course by such cession it loses its sovereignty over the territory ceded. Again, this inalienability of sovereignty does not carry with it the idea that a temporary bearer of it may not abdicate it. This abdication of sovereignty by a particular monarch does not mean an alienation of sovereign power by the State.

(3a) *Imprescriptibility*—This means that sovereign power cannot be lost by prescription ; that is, in consequence of non-assertion or non-exercise through a long period of time. The doctrine of prescription is only applicable in the domain of private law where rights in property may be lost in consequence of non-exercise for many years. Sovereignty which is once vested in the people cannot be lost through the operation of the doctrine of prescription.

(4) *Exclusiveness*—Sovereignty implies an exclusion of any other higher power within the State. It is by virtue of this attribute that the State is entitled to obedience from every citizen. There are various other authorities within the State but all these derive their power from the State and for this reason cannot claim that proud position which the State itself occupies.

(5) *All-comprehensiveness*—The sovereignty of the State makes itself felt everywhere within the State. It keeps all persons and things in the territory under its strict control. The rule of extra-territoriality according to which diplomatic representatives of foreign States are excluded from the jurisdiction of a State in which they may happen to reside seems to be an apparent exception to this principle of all-comprehensiveness ; but this is no real exception, because sovereign States have sometimes been found to take away the privilege which foreign representatives enjoy under the rule of extraterritoriality.

Sovereignty controls all persons and things.

It is incapable of division.

(6) *Indivisibility*—Sovereignty of the State is a unit and as such is incapable of division. It represents the supreme will of the State and the expression of this will through different organs does not mean a division of the will itself. We can never conceive of a divided will just as we cannot conceive of half a square and half a triangle.

The theory of divisibility of sovereignty acquired prominence with the development of federal form of government. The American publicists have been the principal supporters of the theory. The formation of a federal union, however, does not lead to the division of sovereignty of the State. By federation the several states combine and form one State with one sovereignty. The component states lose their sovereignty and are called States only by courtesy.

View of the American publicists.

Federation does not divide sovereignty.

Sec. 3(a). Theory of Limited Sovereignty.

The sovereignty of the State is legally unlimited in the sense that none can challenge its authority. If there be any authority above it, the State loses one of its important characteristic and ceases to be State. This is the legal and traditional conception of sovereignty. There are some writers who assert that there can never exist in this world an utterly uncontrolled power and as a matter of fact, the State does not enjoy any such power. They speak of certain limitations upon the power of the sovereign. In the first place the sovereignty of the State is limited by the prescription of divine law as well as by the law of Nature. The earthly sovereigns know fully well that God is watching their conduct and that they are responsible to God from whom they derive their authority. There are also similar other limitations which are variously described as the principles of morality, natural

Limitations to the sovereign power of the State.

justice and religion, each of which influences considerably the exercise of sovereign power of the State.

Prof. Dicey speaks of two other limitations which he describes as (1) external and (2) internal. The external limit arises from the possibility that sovereign power may be disobeyed if it is exercised in an arbitrary manner without any reference to public opinion. No despot can venture to interfere with the religious and customary rights of the citizens because such an interference will give rise to a rebellion which it will be too difficult for him to cope with. The internal limit means, according to Dicey, the limit that the moral nature of the person-in-power will bring with it.

Limitation
imposed by the
constitution.

Some modern writers hold that sovereignty of the State is limited by the laws of the constitution. The laws of the constitution regulate the exercise of sovereign power by the various departments of Government and for this reason they claim a superiority over ordinary laws.

By the Inter-
national law.

Another limitation upon the sovereign power of the State is to be found in the international laws which now regulate the relation between independent States. The States are found to obey these laws because the violation of those laws may not be tolerated by other States.

Absolute
nature of the
State.

All the limitations referred to above are not limitations of the sovereign power of the State. The sovereignty of the State is absolute. The State can do whatever it likes. The law of Nature, the principles of morality, the laws of God, the dictates of humanity and reasons, the fear of public opinions and similar other alleged restrictions have no legal effect except in so far as the State chooses to recognise them. The State can ignore these restrictions any moment it likes and act in a manner which may be opposed to the principles of morality and justice.

Sec. 3(b). The Theory of Self-limitation.

The theory has been variously described as the theory of auto-determination, auto-limitation and auto-obligation. It was first enunciated by Ihering and later adopted by various other German writers. These writers recognise the limitations upon the sovereignty of the State and maintain that these limitations are self-imposed restrictions. If the State is bound by the laws, they say, it is bound

What it is.

by its own will which finds expression in the form of law. The limitations which the laws impose upon its power are those which the State chooses to impose upon itself.

Similarly, the International treaties come within the category of self-imposed restrictions. These treaties have force and validity only because the States agree to be bound by them for mutual convenience. They are at liberty to throw off these voluntary obligations and there is no power which can legally enforce them.

The theory has been severely criticised by the French Jurists. They maintain that the limitations upon the sovereignty of the State are far from being self-imposed restrictions.

Criticism. According to them the State is not the sole creator of laws. There exist many rules of conduct which came into being long before the creation of the State and the State cannot venture to infringe them by making new laws. These laws or rules of conduct are independent of the will of the State. Again, the State is bound to take into account the natural rights of citizens and these natural rights exist anterior to the creation of the State.

These critics of the self-limitation theory are often guilty of confusing the State with Government. They assert that the State is limited by law but as a matter of fact the State itself does not know such limits. It is only when the sovereign power is exercised by the Government that these restrictions become obvious.

Sec. 4. Austin's Theory of Sovereignty.

Austin states his view of sovereignty in the following manner :—"If a determinate human superior, not in the habit of obedience to a like superior, receives obedience from the bulk of a given society, that determinate superior is the sovereign in that society and the society (including the superior) is a society political and independent." If the theory is analysed, sovereignty will have the following attributes :—First, the sovereign must be either a determinate person or a determinate body. When considered in this light the general will as enunciated by Rousseau cannot be sovereign.

Secondly, the sovereign's power is unlimited. He has right to exact obedience from the people to the commands but he himself does not submit to anybody in this world.

Thirdly, the sovereign Power is incapable of division. It may be wielded either by a particular person or by a body of persons acting jointly.

Austin has also stated his view of law. According to him law is a command of the sovereign who knows no other superior. Austin's view of sovereignty and of law represents the lawyers' view of the same. He speaks of the unlimited power which a sovereign legally enjoys within the State.

Austin's theory has been vehemently criticised by political writers on the following grounds :—

First, it has attributed sovereignty either to a definite person or to a body of persons. By doing so it opposes the democratic doctrine of sovereignty—a doctrine which goes to attribute sovereignty to the general will. Sovereignty, according to Sir Henry Maine, has sometimes been in the hands of persons not determinate.

Secondly, it ignores altogether the practical limits to sovereignty. As Prof. Laski says "the sovereign is compelled to will things desired by bodies in law inferior to itself". These limits have been described by certain writers as practical limits on the legal absolutism of sovereignty but it is true that, legally speaking, sovereign is a despot, however benevolent he may be in fact.

We should however notice in this connection that these equitable maxims can gain ground only in so far as they are recognised by the sovereign power of the State. Again, the International law may appear to be another limitation upon the absolutism of the sovereign power but in the last analysis it will be found that there is no legal power to enforce these laws. These are obeyed because the sovereign power wishes to obey the same. These do not furnish any limitation to the absolutism of the sovereign power.

Austinian conception of law is also defective. There are many customary laws which are not commands of the determinate human superior but which are nevertheless obeyed.

The Pluralists have ignored the absolutism of the sovereign power by exaggerating the autonomy of the groups.

Among modern critics Prof. Harold J. Laski observes that it is impossible to make the legal theory of sovereignty valid for political philosophy. He points out the difficult or rather impossible task of finding out such a sovereign power

in the actual States. Even the King-in-Parliament which according to Austin represents the best example of legal sovereignty would risk its very existence if it would venture to disfranchise the Roman Catholics or to prohibit the existence of Trade Unions. Sovereignty, again is not located in a determinate body. In the last analysis it is found to reside in the electorate which is an indeterminate body. To describe the sovereignty of this indeterminate body as political sovereignty as opposed to legal sovereignty is to suggest that the notion of sovereignty is divisible. And it is clear that this suggestion cannot be tolerated by the Austinian school.

Sec. 5. Pluralistic theory of Sovereignty.

The conception of the Omnipotent State and its sovereignty has been questioned by a school of political thinkers variously known as the Pluralists, Guild Socialists or Syndicalists. The English writers Laski, Maitland and Cole are the principal exponents of this theory. In Germany Otto Gierk has made notable contribution to this theory. According to these writers the society consists of several groups with distinct aims and interests. Each of these groups stands for its own interest and has separate organisation to promote it. Each Society has its own laws and can enforce obedience to the same independently of the State. The State cannot ignore the sovereign power of these groups. The State exists for the promotion of a prescribed function and serves as an "agency of co-ordination and adjustment among the associations of which it is composed". This theory which is known as the Pluralistic theory of sovereignty takes away from the State the absolute sovereignty which it enjoys according to the Monistic theory of State. It reduces the State to the position of an ordinary association and does not recognise any right which is higher than those enjoyed by the other associations within the State. All groups are equally sovereign within their respective spheres and the State cannot by virtue of mere force invade the proper sphere of any group. The State, therefore, is not a unity, and sovereignty is not indivisible.

Krabbe in his attempt to ignore sovereignty of the State emphasizes the supremacy of law and says that the State is as much bound by the law as is the individual. The action of the State must find out a legal justification. The State therefore cannot make legal actions which are otherwise illegal. The authority of law is more potent than the authority of the State. The State is not the maker but the guardian of the law.

Sec. 12(a) Arguments against the Universal State.

People are not in the same stage of civilisation.

There are certain writers who do not favour the idea of Universal State on the following grounds :—First, such a State cannot be created inasmuch as it requires a universal mind as its basis. People of the world belong to different nationalities and have not as yet reached the same state of civilisation.

Secondly, the idea of a Universal State assumes a perfection in human beings which they have not yet attained; but in spite of their imperfection men can form such a universal state. The citizens will be controlled by the Universal State in the same way as by the modern States.

It cannot continue for a long period of time.

Thirdly, it is contended that a Universal State must be monarchy, otherwise it will not continue for a long period of time. But this contention is erroneous inasmuch as the progress of federal type of government shows that such a state may be practicable and successful if it has a federal type of organisation.

It will abolish individual liberty.

Fourthly, it is argued that the establishment of such a state will abolish individual liberty; but this contention also does not hold good because the organisation of the Universal State will not affect the ordinary lives of individuals. There will still remain the local organisations which will control the local affairs. The Universal State will have a separate organisation with the object of promoting the general interest of the people.

Sec. 13. The Imperial Federation.

The Imperial Federation has reference to the British Empire.

The question of Imperial Federation has become a burning topic among political thinkers of the present time. This Imperial Federation has reference to the British Empire. It is suggested that the whole of British Empire which includes various colonies and dependencies can very well be organized as a federal type of government. The dependencies should enjoy local autonomy but at the same time there should be a central government which should control the general interest of the Empire. At present the central government does not represent the dependencies but controls their powers in a strict manner. This causes dissatisfaction and promotes ill-feeling among the dependencies. A federal type of organisation is sure to avoid these evils which are inherent in a unitary form of government. It will ensure the integrity and stability of the Empire. Again,

we find that co-operation of the various parts of the Empire is urgently necessary in the matter of Imperial defence and this co-operation can hardly be secured unless the dependencies are allowed to have some voice in the foreign policy of the Empire.

Let us now turn to discuss how far this federal organisation is favoured by the circumstances of the present time. There are

Circumstances favourable to Imperial Federation.	certain parts of the Empire which contain population of the same race, language and religion as the people of Great Britain. These parts which include the self-governing dominions can with success form a federal union. There are certain
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other dependencies where the population no doubt differ in respect of race, language and religion but they are nevertheless desirous of Imperial unity for their defence against foreign aggression. Thus we see that federal sentiment is common to almost every part of the British Empire. Besides the sentiment of unity referred to

There are institutions which speak of close intimacy between the various parts of the Empire.	above there are certain institutions which speak of close intimacy between the various parts of the Empire. The King-Emperor is the chief Executive head of the whole Empire. Though it is not possible for the king to be present in every part of the Empire still the executive functions are carried on in the parts where he is not present by his representatives and the acts done by the representatives are acts of His Majesty.
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Commercial unity.	The different parts of the Empire have already combined for commercial purpose in order to protect their Imperial interests. This spirit of organisation will promote Imperial solidarity and help the framing of the Federal constitution.
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There are several other institutions which have acquired prominence in recent times. Of these the most important are the Colonial conferences, the offices of the High Commissioners, the Secretary of State for Colonies, and the Committee of Imperial Defence.

Sec. 14. Arguments against Imperial Federation.

Theoretically speaking, the scheme of Imperial Federation may appear to be the best of all possible schemes for reconciling the interests of the Empire with that of the dependencies; but there are practical difficulties in the organisation of the whole Empire on federal principles.	
Practical difficulties.	

First, federal organisation is scarcely possible in an Empire where the different parts are so widely separated from one another. Federalism demands geographical contiguity. The wide gulf that separates Canada, New Zealand, India and other dependencies from Great Britain makes common organisation almost impossible.

Federalism demands geographical contiguity.

Secondly, the British Empire contains population of diverse nationality. The people of India differ in race, religion and language from the people of the United Kingdom, Canada and Australia. Federalism can seldom progress in an Empire where there is a diversity of interest.

Population of diverse nationality.

Thirdly, difficulties will arise in the constitution of the Central government. The several parts of the Empire should be represented in the Central government but there will surely be a quarrel with regard to the number of representatives that each will send and the amount of contribution that each will have to make.

Difficulty in the constitution of the Central government.

Fourthly, England will lose much of her pre-eminence if the scheme is ever realised. At present the British Parliament controls the affairs of other parts of the Empire and it is, in fact, the only sovereign legislature that exists within the Empire. The organisation of the Empire on a federal basis will lead to the creation of a Central Legislature in which the dependencies will have representatives and England will have only a subordinate legislature of her own.

England will lose much of her pre-eminence.

Fifthly, the Imperial federation will have the effect of lessening the prestige of the self-governing dominions. The self-governing dominions enjoy considerable autonomy and the British Government seldom interferes with their administrative policies unless they are prejudicial to the Imperial interest. If federalism is introduced within the Empire, the dominions will be controlled strictly in certain matters by the Central government in which the voice of their representatives will not carry much weight.

It will lessen the prestige of self-governing dominions.

A clear understanding of the above objections against the scheme of Imperial Federation will lead to this conclusion that the scheme cannot successfully operate within the British Empire.

Sec. 15. World Federation : How far it is practicable.

We have already seen why the whole world cannot constitute one state ; but the world peace cannot be restored if the indepen-

dent States are allowed to pursue their selfish, ambitious and imperialistic projects. Some sort of world-organisation is urgently called for, otherwise the States will not give up their militant organisation to bring under subjugation the weaker States and extend their territorial possessions. There are certain tendencies which facilitate grouping of all States under one world-wide organisation. These include the revolutionary achievements in the sphere of communication, which have annihilated distances and promoted the growth of one international culture and civilisation. Self-sufficiency of the States has disappeared and in its place we find a wholesome spirit of interdependence. This cultural closeness and this economic interdependence, might have secured peace and prosperity for all nations but for the national sovereignty which stands in the way of concerted action and enables the State to violate the terms of any agreement for the materialisation of its selfish projects. A federal organisation, if feasible, will do away with national sovereignty which has been the source of so much trouble.

The scheme of world-federation cannot command support on the following grounds :—

(a) Absence of federal sentiments among the units will obstruct the organisation and the working of federation on efficient lines.

(b) In spite of revolutionary changes in communication, the distances which separate one state from another will create administrative difficulties of serious nature.

(c) The States which follow liberal democracy in the political sphere and capitalistic ideals in the economic sphere cannot combine with States which are organised on dictatorial and socialistic lines.

(d) The problem of representation in the Union government will create additional difficulties. If the representation is founded upon population basis India, Russia and China, which claim overwhelming population, will be entitled to a majority of seats. The powerful nations will not tolerate such a mode of representation.

For the above reasons we can safely conclude that world is not as yet fit for any organisation on federal lines.

Sec. 16. The Atlantic Charter : How far it will restore International peace and order.

At the earlier stages of the war Germany achieved monumental progress by subduing a number States of Europe. This success struck terror in the hearts of the Allies who came forward on 24th Sept. 1941, with the famous Atlantic Charter which purported to set up a new order in Europe by recognising the lost

rights of the vanquished as well as the existing rights of all peoples to shape their own government and to enjoy their territorial possession unhampered by the signatories of the charter. The object of this charter is to enlist the support and sympathy of the European powers who had already come under Fascist control. The charter aims at final destruction of the Nazism and restoration of a new order in which all States, great or small enjoy equal rights in the economic sphere to tap the resources of the world and traverse in high seas and oceans without hindrance. The charter emphasises the need for disarmament which alone can ensure permanent peace and security in the world. The charter rests upon the goodwill of the 26 nations who signed it and there is no guarantee that the powerful and the more ambitious nations will not flout its terms when occasion arises. Again, many powerful nations are not parties to the charter and it is quite uncertain when Nazism will disappear from the world.

PROTOCOL ON FRISCO CHARTER

The Frisco Charter was drawn up at the San Francisco conference. It is a charter by which the nations of the world would seek to maintain international peace and security, to develop friendly relations between nations and to promote international co-operation. The Big Five States (Britain, U.S.A., Russia, France and China) have been parties to the charter which has also been ratified by a majority of other States.

The signatories to the charter have agreed to pursue their objectives by taking collective action to prevent aggression and to settle international disputes.

The United Nations Organisation is to come into being immediately after the charter obtains the signatures of the big five and a majority of other States.

ORGANS OF THE UNITED NATIONS

Six main organs make up the United Nations. These include (i) The General Assembly, (ii) Security Council, (iii) Economic and Social Council, (iv) Trusteeship Council, (v) International Court of Justice and (vi) Secretariate.

(i) General Assembly : It is composed of all member States. Each member can send not more than five representatives on the Assembly. Each member has one vote. The General Assembly

meets once a year. Important questions are determined by a two-thirds majority and the rest by a simple majority.

(ii) The principal function of this Assembly consists in making recommendations on the principle of international co-operation towards the maintenance of peace and security, including the principles of disarmament and regulation of armament. It may also make recommendation for the peaceful settlement of any situation which might impair friendly relations among nations. It functions through six main committees :—

(a) Political and security, (b) Economic and financial, (c) Social, humanitarian and cultural, (d) Trusteeship, (e) Administrative and Budgetary, and (f) Legal.

(ii) Security Council : It is composed of five permanent members representing U. S. A., United Kingdom, U. S. S. R., France and China and six non-permanent members representing at present Argentina, Colombia, Belgium, Ukraine, Canada, and Syria. Each member of the Council is entitled to send one permanent representative.

Its functions include those for maintaining international peace and security, and for investigating disputes leading to international friction and for using economic or military sanction to prevent or stop aggression.

(iii) Economic and Social Council : It is composed of eighteen members elected by the General Assembly. It is concerned with the economic and social activities of the United Nations and insists on fundamental rights and freedom for all.

(iv) Trusteeship Council : This Council attempts to promote the sacred Trust accepted by the United Nations for promoting the well-being of dependent peoples.

(v) International Court of Justice : This acts as a court of law and deals with legal questions arising between the members. The Security Council may refer any legal dispute to this court. It consists of fifteen judges elected by the General Assembly and the Security Council.

(vi) Secretariate : It is composed of a Secretary-General and his staff. The Secretary-General is the chief administrative officer of the United Nations.

Questions and Answers

Q. 1. How does a federal union differ from an alliance, a confederation and a unitary state ? (C. U. 1940).

Ans. See Sec. 4.

Q. 2. Discuss with special reference to India, the conditions which favour a federal rather than unitary system. (Bom. 1941).

Ans. See Sec. 8.

Q. 3. Compare and contrast a federation with a confederation and give examples of both. Distinguish carefully between the two main types of federation. Would you advocate a federal type of Government for India? If such a form be adopted for India which of the two main kinds of federation would you prefer? (C. U. 1930, 1947; Patna, 1925; Rangoon, 1939).

Ans. See Secs. 4 and 4(b) which deal with essential conditions of federalism and show how far these conditions are absent.

Q. 4. Describe the character of true federal union. In what respects does such a union differ from a confederation? Illustrate your answer. (C. U. 1935).

Ans. See Sec. 4.

Q. 5. What are the conditions essential to the success of a federal union? How far do they exist in India? (C. U. 1939).

Ans. See Sec. 5.

Q. 6. Compare and contrast the Canadian and American forms of federation estimating the success of each. (Punjab, 1938).

Ans. See Sec. 5(b).

Q. 7. Describe the principles on which powers are distributed in a federation between the federal state and the constituent units. (Patna, 1934).

Ans. See Sec. 5(b).

Q. 8. Describe the constitution and functions of the permanent court of International Justice. (Nagpur, 1935).

Ans. See Sec. 11.

Q. 9. Give a short account of the non-political activities of the League of Nations. (Pat. 1934).

Ans. See Sec. 11(a).

Q. 10. Write a short essay on the constitution, functions and work of the League of Nations. (I. C. S. 1934; Bom. 1937).

Ans. See Secs. 11 and 11(a).

Q. 11. Explain the principles and methods of the distribution of powers between a federation and its units in a federal form of Government. (C. U. 1942).

Ans. See Sec. 5(b).

Q. 12. Discuss the characteristic of a federal government. Illustrate your answer by reference to the U.S.A. (C. U. 1946).

Ans. See Sec. 4(a).

CHAPTER VI

✓ SOVEREIGNTY

* Sec. 1. Sovereignty—a Distinctive mark of the State.

The term 'sovereignty' is derived from the Latin word '*superanus*' which means supreme. It is the essential characteristic of a State. There are various associations in this world but all these associations do not enjoy sovereign authority over its members. The State enjoys supreme power over its citizens and subjects and can enforce obedience to its laws and regulations. Burgess defines sovereignty as 'the original, absolute and unlimited power over the individual subjects and over all associations of subjects, it is the underived and independent power to command and compel obedience'. There is no legal restriction upon the sovereign power of the State. The State which has this sovereign power can do whatever it pleases. When a country has its laws and regulations controlled by another country it cannot be designated as State because it has not that sovereign or supreme power which is the distinctive mark of the State. Similarly, the dominions which enjoy limited autonomy do not possess any such power. India now enjoys Dominion Status.

Definition of
sovereignty.

* Sec. 2. Various Aspects of Sovereignty.

The sovereignty of the State may be studied from different points of view. We are familiar with the well-known distinction between legal sovereignty and political sovereignty. The legal sovereignty gives us the lawyer's view of sovereignty of the State. According to the lawyers the sovereign power of the State means the authority which expresses the will of the State in the form of laws and enforces obedience of the subjects to them. The legal sovereign, therefore, means the supreme law-making authority in a State. Dr. Garner describes it as "the determinate authority which is able to express in a legal formula the highest command of the State ; the power which can override the prescription of the divine law, the principles of morality and the mandates of public opinion." In Great Britain the legal sovereign is the King-in-Parliament which has power to do whatever it likes.

Legal and
Political
sovereignty.

The other expression, viz., "the political sovereignty" implies the power that lies behind the legal authority and controls its commands. The will of the people influences legislation greatly, because it will be physically impossible for the legal sovereign to

SOVEREIGNTY

enforce obedience to laws if they are not supported by the people of the State. Thus we see that a legal sovereign, though its power is unlimited, cannot ignore the will of the people. This will of the people is the political sovereign of the State. It should be remembered in this connection that the expression of this will does not make law except in the case of a direct democracy but indicates the type of law which public opinion demands.

There is another expression which is often used. This is popular sovereignty which means the power of the masses as distinguished from that of an individual ruler or of the classes. With the growth of democracy the theory of popular sovereignty has a large body of supporters. The right to participate in the affairs of the State is now claimed by the people as their birth right. Every State has been forced by circumstances to extend franchise with the result that the real source of authority now lies with the mass of population i. e., with the majority of voters.

The sovereignty of the masses has no definite meaning in practical politics. Even in modern democratic States there are many who do not enjoy the right of franchise. Although attempts are being made to recognise this aspect of sovereignty through the use of referendum and initiative there is as yet no satisfactory relation between the masses and the government. Again, people have no legal right against the State. They must obey the existing government and try to bring reform by constitutional means.

Sec. 2(a). Distinction between *De jure* Sovereignty and *De facto* Sovereignty.

By *de jure* sovereignty we mean a supreme power which is by law entitled to enforce obedience from the subjects and citizens. In every State we find a person or a body of persons whose right to obedience has its foundation on law. He may not have sufficient physical strength to exact obedience from the people, but nevertheless the people will obey such authority because the law of the country has conferred upon him a sacred right to govern. A *de facto* sovereignty on the other hand rules by virtue of superior physical or moral force. He may be a military dictator whose order goes unchallenged, a spiritual priest whose claim to obedience is based upon spiritual force, or a self-constituted assembly which has come into power and can compel obedience. The law of the country does not recognise him as sovereign but he expels the legal sovereign and exacts obedience.

from the people by the supreme force that he possesses. The *de facto* sovereign therefore is the actual sovereign—a sovereign who actually controls the people though he is not legally entitled to control them. Sometimes we find that the *de facto* sovereign obtains in course of time a legal status in the same way as actual possession in private law ripens into legal ownership through prescription. Ultimately that right will prevail which is accompanied with might. A *de jure* sovereign can seldom maintain his right to command obedience if he has not sufficient strength to drive away those who come to usurp his sovereign right. If the *de facto* sovereign establishes himself by expelling the legal sovereign, new laws will be framed to give him a legal status. The Bolshevich regime in Russia had in the beginning no legal basis but gradually it obtained a legal status and is now recognised by foreign governments.

Austin cannot tolerate this distinction between *de jure* and *de facto* sovereignty. According to him sovereignty is always *de jure* because the will of the sovereign is law. A government on the other hand may be either *de jure* government or *de facto* government.

Sec. 2(b). Distinction between Titular and Actual Sovereignty.

A titular sovereign means a sovereign who is designated as such but who does not actually exercise the sovereign power. Such sovereigns are nominal figure-heads without any real power. The king of England is a titular sovereign because the real sovereign powers are exercised not by him but by the Parliament. Of course his assent is required in every bill that is passed by both the Houses of Parliament, but the king never refuses to give assent whenever the two Houses agree in the passing of a bill.

Sec. 3. The Attributes of Sovereignty.

The characteristic attributes of sovereignty may be described as follows :—(1) Absoluteness, (2) Permanence, (3) Inalienability, (4) Exclusiveness, (5) All-comprehensiveness, and (6) Indivisibility.

(1) *Absoluteness* is the most important characteristic of sovereignty. Sovereignty implies a supreme power which does not bow down to any other higher power in this world. This is so when sovereignty is looked at from the legal standpoint. In the legal aspect of it the sovereign power knows no limit ; it can make and unmake any law it pleases. This absoluteness however

exists only in theory but in practice sovereignty will have its absoluteness greatly reduced. The sovereign power in its absolute form belongs to the State and it is for the government to exercise this sovereign power. When the government comes to exercise it, the power must be adapted to the environment.

(2) *Permanence*—The sovereignty is the essential characteristic of the State and continues so long as the State itself exists. So intimately it is connected with the State that we may briefly describe the relation in the following manner :—no State, no sovereignty ; no sovereignty, no state. The sovereignty of the State does not cease with the death or dispossession of a particular man that bears it or with the dissolution of a particular chamber by which it is exercised.

Sovereignty is inseparable.

(3) *Inalienability*—The State cannot alienate its sovereign power ; when it does alienate its sovereign power it cannot be designated scientifically as State. According to Lieber, the well known American writer "sovereignty can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life or personality without self-destruction". We should not, however, think that this attribute of sovereignty makes cession of a part of the territory by the State impossible. The State may cede a part of its territory but that does not mean that it has ceded its sovereignty as such. Of course by such cession it loses its sovereignty over the territory ceded. Again, this inalienability of sovereignty does not carry with it the idea that a temporary bearer of it may not abdicate it. This abdication of sovereignty by a particular monarch does not mean an alienation of sovereign power by the State.

Sovereignty is inalienable.

(3a) *Imprescriptibility*—This means that sovereign power cannot be lost by prescription ; that is, in consequence of non-assertion or non-exercise through a long period of time. The doctrine of prescription is only applicable in the domain of private law where rights in property may be lost in consequence of non-exercise for many years. Sovereignty which is once vested in the people cannot be lost through the operation of the doctrine of prescription.

Sovereignty can not be lost by prescription.

(4) *Exclusiveness*—Sovereignty implies an exclusion of any other higher power within the State. It is by virtue of this attribute that the State is entitled to obedience from every citizen. There are various other authorities within the State but all these derive their power from the State and for this reason cannot claim that proud position which the State itself occupies.

It implies exclusion of power.

(5) *All-comprehensiveness*—The sovereignty of the State makes itself felt everywhere within the State. It keeps all persons and things in the territory under its strict control. The rule of extra-territoriality according to which diplomatic representatives of foreign States are excluded from the jurisdiction of a State in which they may happen to reside seems to be an apparent exception to this principle of all-comprehensiveness ; but this is no real exception, because sovereign States have sometimes been found to take away the privilege which foreign representatives enjoy under the rule of extraterritoriality.

Sovereignty controls all persons and things.

(6) *Indivisibility*—Sovereignty of the State is a unit and as such is incapable of division. * It represents the supreme will of the State and the expression of this will through different organs does not mean a division of the will itself. We can never conceive of a divided will just as we cannot conceive of half a square and half a triangle.

It is incapable of division.

The theory of divisibility of sovereignty acquired prominence with the development of federal form of government. The American publicists have been the principal supporters of the theory. The formation of a federal union, however, does not lead to the division of sovereignty of the State. By federation the several states combine and form one State with one sovereignty. The component states lose their sovereignty and are called States only by courtesy.

View of the American publicists.

Federation does not divide sovereignty.

* Sec. 3(a). Theory of Limited Sovereignty.

The sovereignty of the State is legally unlimited in the sense that none can challenge its authority. If there be any authority above it, the State loses one of its important characteristic and ceases to be State. This is the legal and traditional conception of sovereignty. There are some writers who assert that there can never exist in this world an utterly uncontrolled power and as a matter of fact, the State does not enjoy any such power. They speak of certain limitations upon the power of the sovereign. In the first place the sovereignty of the State is limited by the prescription of divine law as well as by the law of Nature. The earthly sovereigns know fully well that God is watching their conduct and that they are responsible to God from whom they derive their authority. There are also similar other limitations which are variously described as the principles of morality, natural

Limitations to the sovereign power of the State.

justice and religion, each of which influences considerably the exercise of sovereign power of the State.

Prof. Dicey speaks of two other limitations which he describes as (1) external and (2) internal. The external limit arises from the possibility that sovereign power may be disobeyed if it is exercised in an arbitrary manner without any reference to public opinion. No despot can venture to interfere with the religious and customary rights of the citizens because such an interference will give rise to a rebellion which it will be too difficult for him to cope with. The internal limit means, according to Dicey, the limit that the moral nature of the person-in-power will bring with it.

Limitation
imposed by the
constitution.

Some modern writers hold that sovereignty of the State is limited by the laws of the constitution. The laws of the constitution regulate the exercise of sovereign power by the various departments of Government and for this reason they claim a superiority over ordinary laws.

By the Inter-
national law.

Another limitation upon the sovereign power of the State is to be found in the international laws which now regulate the relation between independent States. The States are found to obey these laws because the violation of those laws may not be tolerated by other States.

Absolute
nature of the
State.

All the limitations referred to above are not limitations of the sovereign power of the State. The sovereignty of the State is absolute. The State can do whatever it likes. The law of Nature, the principles of morality, the laws of God, the dictates of humanity and reasons, the fear of public opinions and similar other alleged restrictions have no legal effect except in so far as the State chooses to recognise them. The State can ignore these restrictions any moment it likes and act in a manner which may be opposed to the principles of morality and justice.

Sec. 3(b). The Theory of Self-limitation.

The theory has been variously described as the theory of auto-determination, auto-limitation and auto-obligation. It was first enunciated by Ihering and later adopted by various other German writers. These writers recognise the limitations upon the sovereignty of the State and maintain that these limitations are self-imposed restrictions. If the State is bound by the laws, they say, it is bound

What it is.

by its own will which finds expression in the form of law. The limitations which the laws impose upon its power are those which the State chooses to impose upon itself.

Similarly, the International treaties come within the category of self-imposed restrictions. These treaties have force and validity only because the States agree to be bound by them for mutual convenience. They are at liberty to throw off these voluntary obligations and there is no power which can legally enforce them.

The theory has been severely criticised by the French Jurists. They maintain that the limitations upon the sovereignty of the State are far from being self-imposed restrictions.

Criticism. According to them the State is not the sole creator of laws. There exist many rules of conduct which came into being long before the creation of the State and the State cannot venture to infringe them by making new laws. These laws or rules of conduct are independent of the will of the State. Again, the State is bound to take into account the natural rights of citizens and these natural rights exist anterior to the creation of the State.

These critics of the self-limitation theory are often guilty of confusing the State with Government. They assert that the State is limited by law but as a matter of fact the State itself does not know such limits. It is only when the sovereign power is exercised by the Government that these restrictions become obvious.

• Sec. 4. Austin's Theory of Sovereignty.

Austin states his view of sovereignty in the following manner :—"If a determinate human superior, not in the habit of obedience to a like superior, receives obedience from the bulk of a given society, that determinate superior is the sovereign in that society and the society (including the superior) is a society political and independent." If the theory is analysed, sovereignty will have the following attributes :—First, the sovereign must be either a determinate person or a determinate body. When considered in this light the general will as enunciated by Rousseau cannot be sovereign.

Secondly, the sovereign's power is unlimited. He has right to exact obedience from the people to the commands but he himself does not submit to anybody in this world.

Thirdly, the sovereign Power is incapable of division. It may be wielded either by a particular person or by a body of persons acting jointly.

Austin has also stated his view of law. According to him law is a command of the sovereign who knows no other superior. Austin's view of sovereignty and of law represents the lawyers' view of the same. He speaks of the unlimited power which a sovereign legally enjoys within the State.

Austin's theory has been vehemently criticised by political writers on the following grounds :—

First, it has attributed sovereignty either to a definite person or to a body of persons. By doing so it opposes the democratic doctrine of sovereignty—a doctrine which goes to attribute sovereignty to the general will. Sovereignty, according to Sir Henry Maine, has sometimes been in the hands of persons not determinate.

Secondly, it ignores altogether the practical limits to sovereignty. As Prof. Laski says "the sovereign is compelled to will things desired by bodies in law inferior to itself". These limits have been described by certain writers as practical limits on the legal absolutism of sovereignty but it is true that, legally speaking, sovereign is a despot, however benevolent he may be in fact.

We should however notice in this connection that these equitable maxims can gain ground only in so far as they are recognised by the sovereign power of the State. Again, the International law may appear to be another limitation upon the absolutism of the sovereign power but in the last analysis it will be found that there is no legal power to enforce these laws. These are obeyed because the sovereign power wishes to obey the same. These do not furnish any limitation to the absolutism of the sovereign power.

Austinian conception of law is also defective. There are many customary laws which are not commands of the determinate human superior but which are nevertheless obeyed.

The Pluralists have ignored the absolutism of the sovereign power by exaggerating the autonomy of the groups.

Among modern critics Prof. Harold J. Laski observes that it is impossible to make the legal theory of sovereignty valid for political philosophy. He points out the difficult or rather impossible task of finding out such a sovereign power

in the actual States. Even the King-in-Parliament which according to Austin represents the best example of legal sovereignty would risk its very existence if it would venture to disfranchise the Roman Catholics or to prohibit the existence of Trade Unions. Sovereignty, again is not located in a determinate body. In the last analysis it is found to reside in the electorate which is an indeterminate body. To describe the sovereignty of this indeterminate body as political sovereignty as opposed to legal sovereignty is to suggest that the notion of sovereignty is divisible. And it is clear that this suggestion cannot be tolerated by the Austinian school.

* Sec. 5. Pluralistic theory of Sovereignty.

The conception of the Omnipotent State and its sovereignty has been questioned by a school of political thinkers variously known as the Pluralists, Guild Socialists or Syndicalists. The English writers Laski, Maitland and Cole are the principal exponents of this theory. In Germany Otto Gierk has made notable contribution to this theory. According to these writers the society consists of several groups with distinct aims and interests. Each of these groups stands for its own interest and has separate organisation to promote it. Each Society has its own laws and can enforce obedience to the same independently of the State. The State cannot ignore the sovereign power of these groups. The State exists for the promotion of a prescribed function and serves as an "agency of co-ordination and adjustment among the associations of which it is composed". This theory which is known as the Pluralistic theory of sovereignty takes away from the State the absolute sovereignty which it enjoys according to the Monistic theory of State. It reduces the State to the position of an ordinary association and does not recognise any right which is higher than those enjoyed by the other associations within the State. All groups are equally sovereign within their respective spheres and the State cannot by virtue of mere force invade the proper sphere of any group. The State, therefore, is not a unity, and sovereignty is not indivisible.

Krabbe in his attempt to ignore sovereignty of the State emphasizes the supremacy of law and says that the State is as much bound by the law as is the individual. The action of the State must find out a legal justification. The State therefore cannot make legal actions which are otherwise illegal. The authority of law is more potent than the authority of the State. The State is not the maker but the guardian of the law.

True it is that in modern times many associations have cropped up and have been rendering immense service to the community.

Criticism of the Theory. But this is no justification for depriving the State of its absolute sovereignty and for recognising the sovereignty of groups and associations.

Indeed these groups and associations are parts of the States and cannot legally speaking claim any right against the State. The laws of the groups can be enforced only because the State allows such enforcement. The groups are thus subordinate to the State and its Sovereignty is one and indivisible. A division of sovereign power among a number of associations will lead to innumerable conflicts of jurisdiction and in the absence of an autonomous State the semi-anarchy of the middle ages will again come into being. Thus we see that it is unsafe to place the various associations in the same level with State.

Again, Krabbe's attempt to establish a legal principle superior to the State is wholly futile. Law is nothing but an expression of the sovereign will of the State. Law cannot therefore claim superiority over the State from which it originates.

Sec. 6. The theory of the Location of Sovereignty of a Modern State.

Location of sovereignty may be studied with reference to the two-fold aspect of sovereignty. First, if we take the legal aspect of sovereignty, it is located in a body which has the legal right to make and amend the constitution. The constitution of the State is liable to change and there are different ways of effecting such changes in different States. In England the constitution can be made and amended by a distinct body of persons which may be technically described as "The King-in-Parliament". In France sovereignty is located in the National Assembly and in U. S. A. it is vested in the Congress which can command the support of legislatures of at least three-fourths of the States. This theory of the location of sovereignty has been criticised on the following grounds :—

First, the body that is entitled to make and amend the constitution meets only on rare occasions when the circumstances of the time demand some new laws or changes ; but sovereignty is the permanent characteristic of the State.

Secondly, the constitution-making body has not that unlimited power which sovereignty of the State implies. It has got to act in a legal manner and is often set in motion by the government of the day.

Thirdly, this constitution-making body participates in the expression of the will of the State in the same way as such will finds constant expression through the ordinary organs of the State.

If sovereignty is studied in its political aspect it will be found to lie in the will of the people. The will of the people will ultimately influence the exercise of sovereign power of the State. The public opinion is to be taken into consideration if the country is to be governed in a satisfactory manner. This political sovereignty is exercised by the people through suffrage. The theory of political sovereignty has been criticised on the following grounds :—

First, mere suffrage cannot confer sovereignty on the people ; the public opinion has not the force of law.

Secondly, the people when unorganised cannot make their sovereign power felt. They must have some organisation to make their will effective ; but such organisation means constant interference of the affairs of the State and hampers its progress considerably.

Besides these two theories of the location of sovereignty, there is another theory propounded by Woodrow Wilson which goes to locate sovereignty in the sum-total of law-making bodies within the State ; but this reasoning is fallacious because the law-making bodies derive their rights from the State which alone is sovereign.

* Sec. 7. The theory of Sovereignty: Its Development.

The modern theory which attributes sovereignty to the State had no supporters in feudal ages. The king was regarded as the sovereign and no distinction was drawn between the State and the government.

The modern theory of sovereignty made its first appearance in the writings of Jean Bodin published in the sixteenth century. According to him the State is the outcome of aggregation of families and it is governed by laws formulated by the sovereign power within it. The sovereign authority of the state does not owe allegiance to any other earthly power but must submit to Divine Law and to the laws of Nature and of nations. Bodin thus speaks of the absolute nature of legal sovereignty but at the same time recognises its true limitations.

Next important contribution to the theory of sovereignty

comes from Hobbes. According to him the sovereignty is vested in a person or in a body of persons to whom men in the State of Nature agree to surrender their natural rights and liberty. The sovereign is not a party to that contract and this power is absolute and cannot be challenged. Hobbes thus supports the absolute nature of legal sovereignty and regards it as indivisible and inalienable.

Hobbes is followed by Locke who bases his theory of sovereignty on social contract. He recognises two supreme powers within the State. Ordinarily the Legislature is the supreme power within the State and the citizens are to submit to the laws made by it but there is still another supreme power which remains with the people and is exercised by them when the Legislature betrays the trust reposed in it. These two aspects of sovereignty were later on described as legal and political sovereignty.

Then comes Rousseau who opines that sovereignty is located in the general will i.e., the will of the citizens as a corporate whole. Sovereignty, according to him, resides permanently in the body politic and is absolute, indivisible and inalienable. This theory of sovereignty as enunciated by Rousseau has brought into prominence the part that public opinion plays in legislation.

The theory of sovereignty in its legal aspect has been developed by Austin whose view on the subject has already been studied. His conception of the legal nature of sovereignty is clear and logical. Bentham's contribution to the theory of sovereignty cannot be ignored. According to him the sovereignty of the State is unlimited but there are certain practical limitations upon it.

There is another school of political thinkers who vehemently oppose the Monistic character of State and sovereignty and present a new theory of sovereignty. This is the Pluralistic theory of sovereignty—a theory which recognises sovereignty of the groups and ignores the all-comprehensive character of the State.

In modern times great stress has been laid upon the doctrine of popular sovereignty. Prof. Ritchie is of opinion that it is the people who exercise sovereignty inasmuch as they can by dint of their physical force annihilate the existing Government and set up a new Government to which they choose to submit.

1. Sec. 7(a). Theory of Popular Sovereignty.

This theory goes to locate the sovereign power in the people composing the State. It owes its origin to the forceful writings of anti-monarchical writers of the modern age. Rousseau in his monumental work, 'The Social Contract' expounded the theory with all vehemence he could command and went so far as to reduce the government to the position of a servant executing the sovereign will of the people—the General will.

In modern times the best exposition of the theory is to be found in the writings of Prof. Ritchie. According to him people constitute the sole repository of sovereign power and do actually exercise such power directly by exercising their franchise and indirectly by influencing legislation ; and by threat of rebellion they can at any time annihilate the existing government and establish another of their own choice.

This theory has been attacked on various grounds. First, it wrongly assumes that the mass of the people possess the superior physical force by virtue of more numerical strength and can by dint of that force revolutionize the existing order at any time they like. Secondly, the theory has no logical basis to stand upon. If we conceive the State as people organised by means of government which makes and enforces law, we cannot at the same time ascribe sovereignty to the unorganised mass or to the majority of the people.

Thirdly, it is very difficult to determine the will of the people. Even if that will is known, it cannot be effective unless it is expressed through constitutional process.

Fourthly, the exercise of franchise has no reference to popular sovereignty. This is because the right of franchise is the creation of an independent State and its exercise is strictly controlled by the law of the State. Again, in modern times this right is available to not more than thirty per cent of the entire population.

Sec. 7(b). Ideas of Juristic Sovereignty in Different countries.

The idea of Juristic sovereignty is not the same in every State. This is because this lawyers' view of sovereignty has close reference to the constitutional organisation which differs in different States. In this section we shall have a brief review of the four distinct Juristic conceptions of sovereignty viz., the English, the French, the German and the American.

The English conception of sovereignty as revealed in the

writings of Austin, an eminent English jurist, goes to attribute sovereignty to the King-in-Parliament which is the supreme legislative organ of the State. The State is not regarded as a juristic person having the attribute of sovereignty. Sovereignty of the State in Great Britain means nothing more than the sovereignty of the British Parliament. The French conception of sovereignty before the Revolution also recognised the sovereignty of the monarch who represented an organ of the State and knew no restriction on his powers. This conception changed with the Revolution and Post-revolution Jurists came to entertain an idea of national sovereignty which found expression in public opinion. The German Jurists entertained an idea of sovereignty which is foreign to the English and French Jurists. They regarded the State as a juristic person with a distinct will of its own and sovereignty is the attribute of the State and not of any particular organ of the State. Next we come to the American conception of sovereignty which admits of division of sovereignty between the union and the component States. This division is effected by the constitution itself. This conception of division of sovereignty does not find support from the German jurists who do not recognise the sovereignty of the component States but treat them as so many non-sovereign States.

Sec. 7(c). Theory of Non-sovereign States.

The theory of non-sovereign States has been developed by German writers in their attempt to reconcile their idea of attributing sovereignty to the State as a juristic person with that of regarding the component States of the German Federation as States. These German writers cannot tolerate the idea of dividing the sovereign power between the Federal Union and the component Commonwealths nor can they with justification deprive the members of the union of their statehood in view of the supreme authority which they still enjoy within their domain. Hence, according to this German school these component States do not lose their statehood in spite of the loss of sovereignty.

Garner has vehemently attacked this theory. According to him sovereignty is the essential mark of the State and therefore a State which has lost its sovereignty cannot be designated as State in the proper sense of the term.

Sec. 7(d). Theory of Dual Sovereignty in Federal States.

This theory tells us that sovereignty admits of division and points out how such division takes place when several States combine and form a federation. The chief exponents of this theory

were Hamilton and Madison who found in the organisation of the United States of America a division of sovereignty between the Union and the component States. The Articles of confederation also conferred upon these States the status of independent sovereigns.

The theory of dual sovereignty has evoked serious criticism. The critics argue that sovereignty is one and indivisible. To divide it is to impose a limitation which true sovereignty cannot conceive of. The Federal union brings no doubt complexity to the exercise of sovereignty ; it does not effect a division of sovereignty. In a federal organisation sovereignty finds expression partly through the Union government and partly through the State governments. This does not mean a division of sovereignty itself. It means different manifestations of sovereignty. The theory of divided sovereignty no longer commands support in U.S.A. In its place we find another theory which recognises the sovereignty of the constitution.

Sec. 8. "The Sovereignty is not Antagonistic to Liberty".

The question that we are to answer in the present section is whether sovereignty of the State is inconsistent with the liberty of the people. Now what is liberty ? Is it the unrestricted power of doing whatever one likes ? Certainly not ; because if that be the true meaning of liberty, it will surely mean the privilege of those who can command more physical strength than others. Liberty, therefore, does not mean license. It implies a right to do whatever one likes provided the exercise of it does not interfere with the rights of others. The enjoyment of such right by the people necessitates laws and regulations and a sovereign power from which these laws emanate. The individuals are prevented from interfering with the rights of others only because there are laws which they must obey and the violation of which brings punishment. The laws regulate the rights of individuals and stand as guardian of individual liberty ; unless the State enjoys sovereignty, it will surely fail to compel obedience to the laws and maintain the rights of individuals. Thus we find that sovereignty far from being inconsistent with liberty is the source and guarantee of it. Again, as the State exists for guaranteeing and maintaining the rights of individuals, the latter can have no right against the former.

Sec. 9. Sovereignty as distinguished from Administrative Autonomy.

Sovereignty implies a supreme power which recognises no other higher power within or outside the State. When a State is

sovereign, it can enact any law it likes. It has absolute control over the citizens and can legally take away from the foreigners any right which they are found to enjoy. Whether the State actually exercises its supreme power in the manner described is another thing. In the words of Burgess sovereignty is the underived and independent power to command and compel obedience.

The term 'sovereignty' as defined above is to be distinguished from administrative autonomy. Certain countries may have administrative autonomy over local affairs but they may not have that independent power which sovereignty implies. The Local Governments in many States have been given administrative autonomy. They are allowed to administer their local affairs without any interference from the Imperial Government, but that is only a power derived from and strictly regulated by the Imperial Government.

Distinction
between
sovereignty
and adminis-
trative
autonomy.

Sec. 10. Non-sovereign Law-making body: its characteristics.

By non-sovereign law-making body we mean a body which is entitled to make law but does not possess independent power to make any law it pleases. It occupies a subordinate position and has to make laws within a sphere strictly regulated by the constitution. If in the exercise of this legislative power it passes any act which is not authorised by the constitution the act is *ultra vires* and will be of no effect.

The non-sovereign Legislature derives its power from constitution. The constitution again, cannot be made and amended freely by this Subordinate Legislature. The laws of the constitution owe their origin to another Supreme Legislature which alone can amend and alter its provisions. The control of the Supreme Legislature is manifest not only in regard to constitutional matters but also in the sphere of ordinary law which requires the consent of the representative of the Supreme Legislature and can be vetoed by the Supreme Legislature.

The subordinate legislature cannot make any law which is inconsistent with any Act of the Supreme Parliament.

The restriction of the legislative powers also necessitates the creation of a supreme court with power to determine the constitutionality or unconstitutionality of acts passed by the subordinate legislatures.

Questions and Answers

Q. 1. Define exactly what you understand by sovereignty ; how far can sovereignty properly be said to belong to the people. (C. U. 1916, 1942).

Ans. See Secs. 1 and 2.

Q. 2. Discuss briefly the recent changes in the conception of sovereignty. (C. U. 1931).

Ans. See Secs. 5 and 7.

Q. 3. 'Law is a command which obliges a person or persons to a course of conduct'. Comment on this definition considering particularly the causes of (a) Customary law, (b) Equity and (c) International law. (C. U. 1930).

Ans. See Sec. 4.

Q. 4. Discuss the characteristics of sovereignty. Are the Indian States and the British Dominions sovereign ? Give reasons for your answer. (C. U. 1933).

Ans. See Secs. 1, 3 and 9.

Q. 5. What are the characteristics of a non-sovereign law-making body ? Illustrate your answer. (C. U. 1939).

Ans. See Sec. 10.

Q. 6. Explain clearly the following concepts :—(a) Legal sovereignty, (b) Political sovereignty and (c) popular sovereignty. (Dacca, 1935).

Ans. See Secs. 2 and 7(a).

Q. 7. Examine the Legist conception of sovereignty in the light of modern political development. (Bombay, 1930 ; Punjab, 1938).

Ans. See Sec. 4.

Q. 8. Give an account of the Pluralistic attacks on the theory of sovereignty. (Pat., 1932).

Ans. See Sec. 5.

Q. 9. Briefly explain Austin's theory of sovereignty and the objections to which it is open to-day. (Mad., 1936).

Ans. See Sec. 4.

Q. 10. Examine the objections to the theory that sovereignty lies with the body which has power legally to make any law it wishes. (Bom., 1937).

Ans. See Sec. 4.

Q. 11. State and examine Austin's theory of sovereignty.
(C. U. 1945 ; All., 1930 and Punj., 1939).

Ans. See Sec. 4.

Q. 12. Examine carefully the doctrine of popular sovereignty. What are its limitations ? (C. U. 1947).

Ans. See Sec. 7(a).

CHAPTER VII

FUNCTIONS OF GOVERNMENT

Sec. 1. Various Theories concerning the Functions of Government.

The writers of Political Science differ in their views of the proper sphere of the State. All writers except the anarchists are of opinion that the State must exist, but they entertain different opinions regarding the functions which the State should perform for the well-being of the people. The doctrines about the spheres of the State or Government may be grouped into three classes viz., (1) The Individualistic theory, (2) The Socialistic theory and (3) The Compromise theory.

Theories about the sphere of the State.

Sec. 2. The Individualistic or Laissez-Faire theory.

This theory possibly owed its origin to Locke and was vehemently supported by eminent writers of Political Science and Economy. The supporters of this theory do not do away with the necessity of governmental organisation but want to restrict its functions as much as practicable. Government is no doubt necessary for safe-guarding the life and liberty of the people but it is a necessary evil. Hence the advocates of this theory go to restrict the functions of the State to mere police functions and deprecate its interference in all other matters. The individuals should be allowed to do whatever their self-interest prompts them to do. If the government is not satisfied with mere police functions but extends its activities in other spheres it is sure to destroy individual initiative and crush out that sense of self-reliance without which success cannot be attained in this world. The Government, therefore, should be engaged in restraining crimes only; when

It restricts the functions of Government.

this has been done its task is over. If it proceeds further and takes up other tasks for promoting the well-being of mankind, it will do harm to the community. This is the reason why the Individualists strongly condemn all sanitary legislations, all attempts on the part of the State to prevent adulteration or to regulate injurious trade.

Individualistic theory.

The above theory owes its main inspiration from Bentham and James Mill and received fullest treatment in the writing of John Stuart Mill and Herbert Spencer in the middle of the nineteenth century. Modern individualism differs from the nineteenth century individualism in regarding the group and not the individual as its unit for political purposes. This new individualism tells us that group organisation of society can alone protect the individuals from the privately owned economic interest and from the tyranny of majority rule. The State is little more than a federation of groups and can serve useful purpose by co-ordinating the activities and adjusting the claims between conflicting groups. As soon as these group organisations find any other machinery for composing their differences, the State at once ceases to be indispensable.

In modern times another theory of the State functions deserves our attention. This is the Anarchist theory. In essence this theory is but an extreme form of the Individualistic theory. The supporters of the Individualistic theory speak of restricting the activity of the State as far as possible but the Anarchists aim at giving the citizens complete freedom and hold that any form of governmental control is an evil.

The anarchist theory.

Sec. 3. The Basis of the Individualistic theory.

The theory has been advanced from three principal stand-points viz., (1) ethical, (2) economic and (3) scientific :—(1) The Individualists base their theory on an ethical principle. Man has been sent to this universe to realise his own end by developing fully his own powers. These powers can attain harmonious development only when man has to depend upon his own self in his daily life. Constant interference by the government in every sphere of activity is sure to destroy that spirit of self-help which has been the source of progress. "Excess of government" says Mill "starves the development of some portion of the bodily or mental faculties when it deprives one from doing what one is inclined to do or from acting according to one's judgment of what is desirable."

It is based on ethical principle.

(2) The Individualistic theory of the State is based upon a sound economic principle. According to this theory the State should not control the activity of men in the sphere of industry and commerce. The regulation of the economic activity of men is sure to hamper the material progress of the country ; on the other hand complete freedom will lead to free competition among individuals with the result that things will be available in the market at lower prices. Adam Smith, the father of Political Economics spoke highly of this theory and emphasised its importance in the sphere of trade and industry.

It is also based upon economic principle.

(3) The Scientific Principle :—The supporters of the Individualistic theory are found to base their theory on a scientific principle. This defence of the Individualistic theory comes from biological writers like Herbert Spencer. They say that if the government follows this scientific principle in regulating its activities, the world will contain men who have sufficient strength to adapt themselves to their environments. The biological writers are of opinion that the survival of the fittest, which the Individualistic system will lead to, will improve the state of human society and add to the general well-being.

It is based upon scientific principle.

The advocates of the Laissez-Faire doctrine also put forward two other arguments viz., (i) the argument of experience and (ii) the argument of State incompetency. They refer to the blunders which the State had committed by passing certain harmful acts and urge that this bitter experience of the past establishes the truth underlying the non-interference principle. Finally, to allow the State to interfere in every sphere of human life is to assume that the State is omniscient and infallible. But this assumption is, as experience tells us, totally false. The State has already committed numerous blunders and with the extension of State functions many such blunders will be committed.

Sec. 4. Criticism of the Individualistic theory.

Individualistic theory of State functions has been severely criticised on the following grounds :—

First, the theory in its extreme form is based upon a wrong assumption that State is an evil, but a study of modern civilisation will at once convince us of the important contributions which State has made to human society. Again, with the increasing complexity of modern civilisation the necessity of State interference is more keenly felt.

State is not an evil.

Secondly, the Individualists rely upon another assumption that each individual is the best judge of his own interest. This assumption is also fallacious. If we pursue a man in his daily life we will find that he is eating unwholesome food, drinking polluted water and living in insanitary houses. This conduct on the part of a man at once suggests that State interference in the matter of sanitation and food-supply is necessary.

Thirdly, another erroneous assumption is that State is necessarily hostile to liberty and that multiplication of State functions means a curtailment of individual liberty. We know that liberty does not mean license. If liberty is to be enjoyed by all there must be regulation which will prevent people from interfering with the rights of other persons.

Fourthly, another defect of the Individualistic theory lies in the fact that it over-emphasizes the importance of the individual at the expense of society or State ; but in reality the individual cannot have an existence apart from society. If he is taken out of it he is, as Professor Ritchie says, a mere abstraction, a logical ghost, a metaphorical spectre and mere negation.

Fifthly, the supporters of the Individualistic theory have been accused of unduly exaggerating the mistakes of the State. The Government of a country has no doubt committed many mistakes, but similar mistakes have been committed by other private institutions.

Sixthly, competitive system of production and complete economic freedom can yield satisfactory results only when the contesting parties are equally powerful. But genuine competition can hardly be possible in present economic organisation which reveals a hard struggle between the rich capitalist and poor labourers.

Seventhly, the biological argument of the Individualists is unsound and loses much of its force when we take into account the fact that the very action of the State is a part of the evolutionary process which they speak of. Again, the weaker people when aided by the State may become the best citizens.

Eighthly, the doctrine of negative regulations which speaks of giving the State the function of redressing rather than preventing wrongs cannot bring adequate security to the individual's life and property.

Lastly, objection urged by the Individualists against State interference have some force when the interference comes from the Central Government, but their argument has very little weight when it is directed against a local government acting directly under the eye and control of the people concerned.

In spite of the above objections the Individualistic theory should not be thrown out as an entirely fallacious doctrine. The theory contains some amount of truth. The assumptions that an individual is the best judge of his interest and that he will attain the highest development under a system of liberty and free competition are to be accepted as true except in cases where the assumptions are definitely found to be erroneous. Again, this theory has emphasized the value of individual initiative and self-reliance and has the effect of avoiding unnecessary legislations.

Sec. 4(a). Why the Individualistic theory Failed to command support ?

We have already discussed the objections against the nineteenth century individualism. In this section we are concerned with the causes which led to the disappearance of the theory from practical politics. In the first place the new complexion which was imported into Mill's individualism by the biological interpretation and the application of the Darwinian phrase "the survival of the fittest" meant a reversion to the ethics of barbarism and discredited individualism in the civilised world.

(i) Biological interpretation. Secondly, the theory gave birth to the doctrine of *Laissez faire* in the field of Economics and produced serious consequences upon the economic well-being of the people. In the field of Economics the theory stands discredited because of the following three fallacious assumptions viz., (a) that each individual is equally far-sighted and has equal capacity for knowing what he wants, (b) that each individual possesses an equal power of obtaining what he wants and an equal freedom of choice, (c) that satisfaction of all individuals is identical with the well-being of the community as a whole. Thirdly, the Austrian School of Economics insisted on the free play of consumers' demand and emphasized the need for equitable distribution of income. To secure equity in distribution the State has to enter into the field of Economics and take measures for securing minimum wages and for regulating monopoly price in the interest of consumers. The State intervention has thus become a necessity in these days of complex social struc-

(ii) Evils of *Laissez faire*.

(iii) Fallacious assumptions.

ture and Individualistic theory which wants to restrict the function of the State has been abandoned.

Sec. 5. Socialistic theory.

Another theory which has reference to the functions of the State is the Socialistic theory. This theory unlike the Individualistic theory advocates extension of the functions of the State. The upholders of the theory point out the evils which private management of industries and private ownership of instruments of production have brought about. The present economic organisation and the present system of competitive production have deprived the poor labourers of the fruits of their labour and have given rise to inequality of wealth and opportunity. Again, the competitive production has been responsible for duplication of implements of production and has caused much economic waste.

As a remedy against the present inequality of distribution and wastes of competitive production, the Socialists suggest State management of industries and joint ownership of instruments of production. Some extreme Socialists would further extend the sphere of State functions and require the State to furnish the unemployed with employment, the borrowers with money, the workers with implements and to remove all other wants which people may happen to feel. They think of replacing the present competitive method of production by co-operative organisation in which the means of production, distribution and exchange are controlled by the Government.

Socialistic theory does not however want to curtail individual freedom. Like individualism it aims at securing maximum freedom. It differs from individualism only in respect of the means whereby maximum freedom can be secured. According to the opinion of the Socialists the individual cannot get equal freedom unless the State intervenes in the sphere of production, distribution and exchange.

Socialism is sometimes identified with Communism, but there is a difference between the two conceptions. Communism stands for the holding of all things in common and demands the abolition of private property. Socialism on the other hand accepts private property as essential and prefers intervention of the State in matters of production, distribution and exchange only because it would give more freedom to the individual.

Sec. 5(a). The Various Schools of Socialism.

There are various schools of Socialists, each school lying down definite plans for the realisation of its Socialistic ideals. (1) *The Marxian or Scientific Socialism* :—This school of Socialism derives its strength from the writings of Karl Marx whose work 'Capital' is called the gospel of Socialism. Karl Marx found that

Different
schools of
Socialism.

the labourers of his time were under the absolute mercy of the capitalists who enjoyed the lion's share of what the labourers turned out. He found that capitalism must provoke revolt of the

workers. He accepted in its entirety the orthodox doctrine that labour is the source of value and developed his own theory of surplus value ; this surplus value which according to him was the difference between the exchange value of a commodity and the

Marxian
Socialism.

wages paid to the labourer was usurped by the capitalist. Such an usurpation meant an injustice which must be removed at any cost. He laid down a procedure which the labourers should

follow. First, there should be a combined action on the part of the labourers for securing Parliamentary majority. Once they obtained control of the Government they would confiscate all land and capital goods and introduce the system of State-directed industries. There was no idea of violence in his scheme which only provided for a constitutional method of upsetting the present system of production and distribution. In Russia the labourers were inspired with this Socialistic idea and a Socialistic form of Government was established.

(2) *The Fabian Socialists* :—The Socialists lay down another distinct method to attain their socialistic ends. They are of

They empha-
size literary
propaganda.

opinion that in order to bring a socialistic regime what is necessary is to convince the people that socialism will give them the ideal form of society.

The Socialists of this school included many intellectual giants like George Bernard Shaw, Laski and G. D. H. Cole who wanted to attain their end by literary propaganda. Unlike Karl Marx they regarded value as the creation of society and advocated taxation of inherited wealth and un-earned incomes.

(3) *The Collectivism : State Socialism* :—The followers of this school do not think of upsetting the present system by means of revolution. The methods by which they pro-

State-
Socialism.

pose to bring about social transformation are strictly constitutional and evolutionary. To achieve their end they admit the agency of the

existing State as modified in light of enlightened public opinion influenced by socialistic propaganda. The Collectivists stand for

an evolutionary social order based not on competitive struggle for existence but on planned co-operation in production and distribution for the benefit of all. They urge the necessity of immediate nationalisation of railways, mines, electricity, and canals and gradual elimination of capitalist from other spheres of production on payment of adequate compensation.

(4) *The Guild Socialists*:—The chief exponent of Guild Socialism is Mr. G. D. H. Cole. He has little or no faith in governmental organisation and is not ready to entrust the government with the management of industry. He asks the labourers to be organised in unions or national guilds. These guilds will obtain control over the industry by waging war with the employers and with the State.

The National Guilds League aims at the abolition of the wage-system, the establishment by the workers of self-government in industry, through a democratic organisation of national guilds working in conjunction with other democratic functional organisations in the community. The principle of functional democracy is followed in the industrial sphere as in the administrative and political sphere. The Guild Socialists are of opinion that democratic organisation of society cannot succeed unless there is democracy in the economic sphere. They agree with the Collectivists in nationalising the chief public services and industries, but mere nationalisation will not improve the lot of the workers. The nationalised industries must be worked on democratic lines. The foremen and managers must be elected by the workers so that the control of the administration of the industry may remain in their hands. Unlike the Syndicalists the Guild Socialists recognise the utility of the State and assign to it certain functions which a body like the modern State can alone perform.

(5) *The Syndicalists*:—By Syndicalism we mean militant trade unionism. The three main ideas underlying syndicalism are : (a) Labour is the only source of wealth, (b) the wage-earners have right to own and control industrial concerns and (c) this they should do by means of strikes. The Syndicalists ask the manual workers to wage a class war with a view to causing ruthless ruin of the upper and the middle classes. They propose a scheme of collective ownership and management of industries by the workers. The revolution in the sphere of industry is to be brought about by means of strike, boycott and sabotage. They will usher in a new social order in which the various trade unions will form a national federation which will replace the State. In this respect the Syndicalists follow the ideal of anarchism.

The ideals of the Guild Socialists differ from that of the Fascists. The Fascists do not want to eliminate the employers altogether but give them small, however inadequate, representation in the co-ordinating corporation; the Guild Socialists, on the other hand, place all the members on a footing of equality and bring them under a corporate group having collective rights of self-government. The Fascists treat the State as the only sovereign and omniscient authority to which all functional bodies owe implicit allegiance; the Guild Socialists, however do not assign to the State any sovereign status.

(5) There is another school known as the Christian school. This school aims at introducing co-operative production by workmen's associations.

Sec. 6. The Arguments for Socialism.

The theory of Socialism has been supported on the following grounds :—

(1) The present system of economic organisation, which recognises private ownership of land and other instruments of production, does not bring the labourers their legitimate share in the national dividend. These discontented labourers have to live a life of misery and the poor wages that they receive cannot bring them sufficient food for their nourishment. This accounts for their ill health and inefficiency. The Socialistic regime, it is argued, will liberate the labourers from the capitalists' yoke and improve their economic position. It will secure both justice and efficiency in production and help greatly in the matter of harmonious development of individual character.

(2) The competitive method of production involves enormous economic waste and extravagance in the duplication of services. The producers go on producing commodities without any reference to what their rivals are producing. This leads to over-production. Sometimes, the big capitalists undersell with a view to driving away small competitors. A huge amount of money is also spent in combative advertisement. The Socialists argue that these losses and economic wastes can be avoided if the co-operative principle of production is adopted under which equality of opportunity and equality of reward and economy of production will be secured.

(3) The theory of Socialism, it is argued, is based on principles of justice and right. It is extremely unjust that the gifts of nature should be appropriated by the few fortunate people while others will have no shares in them. The Socialists demand an equal distribution of these gifts.

(4) The society, say the Socialists, is more than mere aggregation of individuals. The welfare of the individual should be subordinated to that of society and attempt should be made to secure the greatest good of the greatest number. This ideal can be achieved only in a socialistic regime.

The maximum social good.

(5) The Individualists have argued that competitive method of production is the best of all possible methods of production. As against this argument the Socialists refer to the success which co-operative method of production has attained in recent times. Again, the government management of certain industries of public nature has brought immense good to the community and demonstrated in clear terms the advantages of collective management over private management.

Socialism and democracy.

(6) Socialism is the economic complement of Democracy. The socialistic regime, which will introduce collective ownership and management and make for a more democratic organisation in the field of production, will surely help the growth of democratic ideals.

Sec. 7. Criticism of Socialism.

The theory of Socialism has been criticised on the following grounds :—Firstly, the most important argument that the opponents advance against the theory is that it cannot be applied in practice. The object of the Socialistic writers is to drive away misery and inequality, but this is a task which no government can perform. Secondly, the Socialists over-estimate the capacity of the State. They are ready to entrust the State with the management of industry. True it is that the State has managed some industries with efficiency but does it follow that it will show the same efficiency when it is to control production of every commodity that people require? Again, production under a Socialistic regime will be carried on with the help of salaried officers and labourers who lack the incentive which a private enterpriser has in his enterprise. The net result will be economic stagnation. Thirdly, the Socialists commit another blunder when they suggest the substitution of collective ownership for private ownership of land and other instruments of production. The suggestion is economically unsound, because if we take away the right to acquire property and accumulate capital we destroy the incentive to work

It cannot be applied in practice.

It overestimates the capacity of the State.

It is economically unsound.

and make an end of all progress. There will be no motive for accumulation of capital and industries will suffer on that account. People will not take the trouble of inventing new machinery because such invention will not bring any remuneration. Fourthly, even assuming that the theory is practicable and economically sound there will crop up some administrative difficulties of serious character. The Socialists speak of distributing rewards of industry according to the share of each worker in production, but how should the contribution of each labourer be determined when all the labourers are not of the same grade? Lastly, although Socialists aim at securing individual freedom, the system of State management of industry which they propose to introduce will bring slavery instead of freedom. The workers will have to obey the government regulation and to follow their routine work however uninteresting that may be. If the Socialists call this their individual freedom we know not what they mean by slavery.

In spite of all the above criticisms the theory has certain merits which we cannot overlook. The theory has brought the question of labour to the forefront and has compelled the legislature to make necessary laws for them.

4. Sec. 7.(a). The True Sphere of the State: Should there be limits to State actions?

We have already seen the two important theories regarding the functions of the State and have found that each of these theories represents an extreme view which we cannot profitably accept. We can not also accept the view of T. H. Green when he says that the function of the State is the hindrance of hindrances. The State can not control the motives of human beings. It can only influence his outward action. It can remove the obstacles that stand in the way of development of what is best in human beings. In modern State with Socialistic tendencies it is not desirable to restrict the activities of the State to mere negative functions. What then should be the real province of government? It is very difficult to draw a line between the sphere of the State and the sphere of the individual, because the extent of State functions depends upon the conditions and needs of State. In a backward society the State may have to undertake many functions which in a civilised society can be safely entrusted to the citizens. Again, as a society grows in complexity the State has to extend its functions in order to secure peace and well-being for its citizens. The modern State cannot limit its activities to the maintenance of peace and order. Again, order can scarcely be

maintained if the State allows the present day inequality to continue and takes no step for the amelioration of the distress of the poor by insisting on a minimum standard of living. The State must also promote the civilisation of a nation. With a view to fulfilling this noble mission the State is found to encourage art, science and literature and interfere in matters, economic and social. But while extending its activities the State should always be cautious and see that its interference promotes the well-being of citizens without unduly restricting their liberties. Ordinarily, the State will not interfere in social and religious matters, but there may be occasions when the aloofness of the State may bring in national calamities of serious nature. Again, the State should not restrict the freedom of thought and discussion because such freedom is essential to development of personality of individuals within the State. The State can intervene only when the individuals abuse such freedom and threaten to bring disorder within the State. The State, again should not interfere with the private life of individuals and attempt to enforce the moral obligation of citizens and impose new culture on them in imitation of the practice which is in vogue in Germany, Italy and Russia.

The duty of
the State.

Sec. 8. The Socialistic tendencies of modern times.

We find that the legislatures of various States are passing laws which are Socialistic in character with a view to ameliorating the miseries of the labourers. We find instances of such laws in England, India, Germany and in many other States. The progressive States have also been found to introduce schemes of insurance against sickness and unemployment. Again, the State has extended its activity in the sphere of industry. In India the production of commodities like opium and other intoxicating drugs has been undertaken by the State. Other instances of Socialistic measures are to be found in municipalities which have undertaken functions like lighting and water-supply. Constructive programmes have been laid down by many modern States for removing congestion in cities and for securing industrial prosperity. Economic planning has also been undertaken with a view to making each country self-sufficient. In almost all the modern States the State is found to own and manage railways and control banks and breweries. Production of gun powder and intoxicating liquors is often a monopoly of the State. Even in case where the industries are not under the direct control of the State certain protective measures have been taken by the State with a view to giving the home industries adequate protection against foreign competition. But these Socialistic functions have been undertaken

The Socialistic
programme.

Public
control over
certain
industries.

for the sake of convenience and national welfare and do not indicate that the State has accepted the Socialistic theory and is giving effect to it.

The Socialistic movement has derived considerable force from the organisation of labourers in a civilised State. In almost every civilised State we find a Socialist party. In Germany this Socialistic movement has been the strongest not only because the Socialists are numerically strong but also because they are united. In France the number of Socialists has increased and they are numerous enough to control the Government. In England the labour party, although it partly represents Socialistic idea does not build its doctrines upon Socialism. In America the Socialist party has not gained considerable ground. There is the National Labour Party with a Socialistic programme.

The various
labour
parties.

Sec. 8(a). State Control over industry: Nationalisation of industry. Should Private property and enterprise exist?

In this age of machine the problems of industry have assumed a complexity which does not admit of easy solution. The unwholesome relation between the labourers and their masters and the unhealthy combination among producers to raise prices of commodities have necessitated State interference and control in the sphere of industry. The State has been compelled to enact factory laws with a view to regulating unemployment of workers and safeguarding their interest. The State, again, has been found to control monopolistic organisations and take measures for ensuring regular supply of commodities at reasonable prices. The question that now arises is whether the State should remain contented with such legislative control or whether the State should take an active part in the organisation of industry. There are extreme Socialists who urge for complete nationalisation of all industries and instruments of production. There are moderates who do not approve of such complete scheme of nationalisation. The process of nationalisation should start with those industries which are affected by a public character and monopolistic in nature. These may include mining, railways, post-office, shipping. The process may be conveniently extended to other industries when the necessity for such extension is clear beyond all doubts. Once it is determined that a particular industry should be nationalised, the ownership of the means of production should at once be vested in the State so that the latter can control production in a manner which contributes to the welfare of the community and can apply the surplus value created by such industry for the benefit of the community as a whole. The next question that arises is how this nationalised industry should

Institution
of the State
is necessary.

be managed. Indeed State ownership does not necessarily imply that the producers concerned will cease to participate in the management of the industry. Laski emphasizes the urgency of such participation which means the rights of the producers to be consulted in the making of policy for the industry. The policy, again, should be made by those who represent the community.

Once such policy has been enunciated its application becomes a matter of technique, and should be placed in a governing Board with full power to carry out the policy. This Board should represent adequately the public, the different vocations attached to the industry and the technical side of the industry. This governing Board should be assisted by the Regional Boards and Works Committee.

Barring these national industries, private enterprises and other industries will find full scope for development. When the State can intervene. The State can intervene for the following purposes viz. (i) for the protection of workers when the businessman does not sympathetically deal with them and provide them with the civil minimum conditions of life, (ii) for the protection of consumers when the businessman charges exorbitant prices and fails to maintain the standard quality in commodities, and (iii) for the protection of the investing public when the business runs on borrowed or share capital.

Sec. 9. The True End of the State: Is the State an end in itself?

The question, which is now before us for discussion, has been answered differently by different writers of Political Science. The ancient Greek philosophers were of opinion that the individual rights and interests were completely sub-servient to the State. The ancient Hindu philosophy did not endorse this view. According to this conception the State was but a means to self-realisation which was the highest end of an individual within the State. Hegel on the other hand places the State above individuals and assigns to it a purpose which is different from the purposes of individuals. The Hegelian conception finds support in the totalitarian States of Germany and Italy, where an individual can justify his existence only in so far as he fulfils the requirements of the State in which he lives. Modern democracy however regards the State only as a means and not as an end. What therefore is the true end of the State? We have already discussed the two important theories of State functions. These theories are defective and cannot give us an adequate idea of the true end of the State. The writers of Political Science have discussed the true ends of the State in their own way and some of them are found to confuse the end with the means. Some writers regard order as the end

of the State while others regard progress, happiness, utility or justice as the end of the State. But each of these conceptions is too narrow to be accepted. Burgess classified the ends of the State as primary, secondary and ultimate. The primary end according to him consists in the organisation of Government and liberty, the secondary, and the ultimate end is the promotion of civilisation of the world.

Professor Garner gives the following classification of the true end of the State. The primary end of the State is the maintenance of peace, order, security and justice among the citizens. When the State has attained this end, the State's function is not at an end. The State should attempt to realise the secondary end which consists in promoting national progress. When this has been done, the State should be engaged in prompting the civilisation of mankind which is the ultimate end of the State.

~ Sec. 10. Classification of State functions.

The functions which the State should perform depend greatly upon the nature and character of the State and also upon the economic and political conditions of its people.

Functions
depend upon
the economic
and political
conditions.

There are States which can safely entrust certain functions to be performed by the people while there are others which are found to perform those functions themselves and cannot safely rely upon the people. In India and Australia lack of private capital and initiative has been the cause of State ownership and management of certain industries. Thus the functions performed by the State are not the same everywhere. In spite of the difference there are certain functions which the State must perform in order to maintain itself. These functions include: (i) the maintenance of internal peace, order and safety; (ii) protection of person and property; (iii) the fixing of legal relations of the family; (iv) the determination of contractual rights; (v) regulation of the holding, transmission and interchange of property, and determination of its liability for debt or for crime; (vi) administration of justice both civil and criminal; (vii) definition and punishment of crimes; (viii) determination of political duties, privileges, and relation of citizens; and (ix) foreign relation. The functions which the State must perform to fulfil its end and to ensure its very existence have been variously described as essential, original, primary, fundamental, necessary and moral functions.

The necessary functions, however, do not represent the total functions of modern States. The States are found to perform certain other functions for the moral and material development of people. The functions may be described as optional functions and include (i) regulation of trade and industry, (ii) management

Essential
functions of
the State.

of railways, (iii) the maintenance of postal and telegraph system, (iv) provision for sanitation and education, (v) maintenance of poor houses, (vi) construction of harbours and wharves, (vii) construction of irrigation works of public utility and (viii) regulations of the hours of labour and conditions of employment.

Another pertinent question that awaits discussion is whether the State should initiate social reforms, adopt schemes for prohibition, remove illiteracy and protect industries. The truly individualistic view which condemns these activities of the State no longer commands support. The State has got to extend its sphere of activity with a view to providing equal opportunity to every individual for developing his moral and intellectual faculties. If there exists any social custom which affects the free mobility of labour from one occupation to another and forces certain sections to live miserable life, the State has every right to interfere and introduce social reforms.

In the same way if the State finds that free consumption of intoxicating liquors tell upon the health and strength of the people, any measure for prohibition may be urgently called for. The removal of illiteracy truly falls within the domain of State activity, because the torch light of knowledge is essential to progress in every sphere of human activity.

The industries are sometimes found to suffer from the competition of foreign goods. When the State is convinced that industry concerned will stand on its own legs in future, the State is justified in affording protection to the infant industries.

Sec. 11. What the State should not do?

In spite of the rapid extension of functions of the State we cannot fully support the idea which is gaining in Totalitarian States about the omnipotence or the omni-competence of the State. The State must regulate its functions in a way which gives full scope for the development of what is best in the citizens. It must fully know that there are certain things which must not be controlled by the State for the real benefit of the individuals whose welfare is its chief concern. The first thing which the State should scrupulously avoid is the controlling of public opinion. It must have the patience of tolerating public opinion. A State which does not recognise freedom of thought and discussion cannot achieve its objects and must in the long run fail to enforce obedience to the law which is its primary function.

Another thing which the State should do well not to control is the moral conduct of the people. It is no doubt true that the laws of the State must have a close bearing with morality but this does not authorise the State to exercise control over the strictly moral sphere.

Customs and culture of the people must be respected by the State. It is highly improper on the part of the State to enact measures which are opposed to the taste and culture of the people and are antagonistic to the customary laws which command greater respect than the statute. The State also should scrupulously avoid interference in purely religious matter and allow each community to enjoy freedom in this respect without wounding the religious feeling of any other community.

Sec. 12. Theory of Anarchism. How it differs from Communism.

Anarchism advocates the abolition of the State. The upholders of this theory are definitely of opinion that every form of Governmental control is an evil which must be eradicated at any cost. They exaggerate the deficiencies of democracy and can not tolerate the inequality of wealth in modern States. They entertain a very high opinion about the inherent good qualities of human beings which can get free scope for development in the absence of any State control or regulation.

The principal advocates of this theory are Godwin, Bokunin, Krapotkin, Proudhon and Tolstoy. Tolstoy advocates a scheme of non-violent non-co-operation while other writers want to overthrow the State by violence.

Anarchism is to be distinguished from Communism. The Communists do not want to abolish the State. On the other hand they require the assistance of the State for removing inequality and establishing a classless society in which people will get things according to their needs. The Anarchists however want to establish the new social order by abolishing the State altogether. The Communists agree with the Anarchists in their utopian idea about the new social order but they differ as to the method of establishing such order.

Questions and Answers

Q. 1. What is in your opinion, the proper sphere of the State? Do you justify what is popularly known in India as the Sardar Act? Give reasons for your answer. (C. U. 1932).

Ans. See Sec. 9.

Q. 2. Should there be any limits to State action? If so, where would you put the limits? (C. U. 1938).

Ans. See Secs. 7(a) and 10.

Q. 3. Examine the functions of Government. Carefully distinguish between those which are essential and those which are optional. (C. U. 1943; Bom. 1936; Punj. 1940).

Ans. See Sec. 10.

Q. 4. "The function of the State is the hindrance of hindrances." Is this a suitable criticism of State activity (Ag. 1943).

Ans. See Sec. 7(a).

Q. 5. How far should the States initiate social reform? On what principles of theory can you justify (a) removal of illiteracy, (b) protection of home industries, (c) prohibition by the State (Pat. 1934).

Ans. See Sec. 10.

Q. 6. Discuss the Socialist's case for extension of functions of Government (Punj. 1937; Nag. 1942).

Ans. See Sec. 6.

Q. 7. Critically examine the chief grounds on which individualism has been defined in recent times. Are these grounds valid? (Punj. 1940; Bom. 1930).

Ans. See Sec. 4.

CHAPTER VIII

LIBERTY

Sec. 1. Different Meanings of Liberty.

The term 'liberty' has been used in various senses; sometimes people use it in the sense of license which carries with it an idea of doing whatever one pleases. There are others who will mean by liberty freedom from the worldly connections. These are the most unscientific uses of the term 'liberty' and we may describe this type of liberty as natural liberty.

The term 'liberty' has also been used in the sense of 'civil liberty' which conveys an idea of rule of law. This view of liberty is entertained in all civilised States where people are entitled to do everything that does not interfere with the rights of others. Again, there is another conception of liberty. We often use the term political liberty which means a right on the part of the people to participate in the affairs of the State. The modern type of constitutional Government ensures this type of liberty. Lastly, the term is used in the sense of

national liberty. National liberty implies freedom from external control. All sovereign States enjoy this liberty because the idea of sovereignty excludes an idea of foreign domination.

Sec. 2. Natural Right:—Law of Nature.

As every idea of right carries with it an idea of law, natural right implies a right which people have according to Law of Nature. The conception of law of nature has a vexed history. According to the Stoic philosophers the law of nature meant the universal divine law and the reason of man was the instrument through which it was revealed. This view of the law of nature viz., that it was the law of reason was incorporated in the Roman *ius gentium* i.e., the law common to all nations. The *ius gentium* was also termed *ius natural* because it embodied a natural or reasonable interpretation of things and relations. In the mediaeval times the idea of law of nature crept into the writings of religious and philosophical writers and it came to be regarded as an ethical ideal. A different meaning was attached to it by the philosophical and political speculators of the fourteenth and fifteenth century. The law of nature came to be regarded as above civil law or positive law. In the philosophy of the sixteenth century the idea of nature was associated with the idea of a State of nature and the relation between natural law and freedom was emphasized. In modern law we find that the law of nature has not lost its importance. It is the basis upon which the whole Equity administration and the international law stand.

We have given above how the idea of law of nature influenced the thought of ancient philosophers and how it still influences the modern Equity Jurisprudence and International law. The idea of natural rights came into prominence in the writing of the Individualistic school of which John Stuart Mill and Herbert Spencer were the noted exponents. They were of opinion that individuals must have the freest scope for the harmonious development of their rights. The individuals should have certain rights which the State should take care not to infringe. The idea of natural right is, however, a very ancient idea inasmuch as we find this idea in the philosophical and speculative writings of Hobbes, Locke, and Rousseau. According to Rousseau natural right implied an unlimited right of an individual to obtain and enjoy the thing which tempts him. This conception of right is unscientific inasmuch as it implies a right which is based purely upon might and is the proud privilege of the strongest alone.

Sec. 3. The meaning of Rights: Whether there can be any Natural right.

The ancient writers spoke of natural right but no such right could exist in a State of Nature in which people lived before State came into existence. In a society there cannot be any unrestricted right to do whatever one pleases. When rights arise? Man is born with certain powers and these powers again are not unrestricted. They are limited by the brute force which others may happen to possess. Rights arise only when each individual is conscious that he has to exercise his powers along with others who have similar powers. This consciousness is the outcome of the moral nature of man and converts power into right. In order that right may exist there must be (a) a power and (b) a recognition of the existence of that power as necessary for the common welfare by others having similar powers. To this we may add a third element viz., the claim to the recognition of the power by everyone possessing the power. Right can be enjoyed provided the exercise of right does not interfere with the similar rights of others. The State exists for the maintenance and co-ordination of the various claims of individuals. It provides a machinery which compels an individual to recognise rights of other individuals and exercise his right in accordance with the conception of a common good. The State has to maintain a bundle of rights in order to enable the citizens to achieve what are their best selves. The State again, recognises those rights because they are useful to the end which the State seeks to serve. Hence many modern constitutions start with enunciation of rights which the State recognises and enforces.

Sec. 3 (a). Correlation between Rights and Duties.

Right is to be distinguished from power. It is power and something more. Power becomes right only when it is recognised by others as powers of which they allow the exercise. Without this recognition or claim to recognition there can be no right. If this is so, Every right implies a duty. right can exist only in a civil society where such recognition is possible. The State lays down rules of conduct and thereby recognises the rights which the citizens should enjoy. Mere recognition can give no validity unless these legal rights are guaranteed by the State recognising the right. This the State does by imposing an obligation upon every citizen not to infringe another's right. Thus as soon as the State recognises a citizen's right to life and property, it imposes an obligation upon every other citizen not to take away his life and property. Every right, therefore, implies a corresponding duty. This is also true in another

sense. The law defines the rights of citizens and it is the duty of every citizen to exercise these rights along with others having similar rights. If he does not bear in mind this important fact the State will not recognise his right. Thus when a man having right to life kills another, the State is justified in depriving him of his life.

The legal rights and duties are to be distinguished from moral rights and duties. A moral right has no sanction behind it except that of public censure or disapprobation.

Sec. 4. Can there be any Right against the State ?

The question now is whether the citizens can have any right against the State. This can be answered by saying:—State exists for the maintenance of rights. There can be no right if the State ceases to exist. In the absence of State there can be only power and no right. The State, therefore, is the only source of right or liberty and it is essential to the maintenance of right. The individual can have no right against the State, but that does not mean that he has no right against a particular form of government. The Government is an organisation or a machinery of the State. The object of this organisation is to help an individual in the fulfilment of his moral destiny; if it fails in its object the people have a right to change it and demand a better form of organisation in its place. In modern democracy where the citizens enjoy political liberty, it is not at all difficult to bring about a change in the form of government by constitutional means. Again, in some modern States certain rights and privileges have been given to the individuals against interference by the executive, the legislative and the judicial authorities of the State. In England there is Habeas Corpus Act which compels a person by whom a person is alleged to be kept in restraint to produce that person before court. The right to change the form of government does not however imply a right to revolution. The citizens cannot have any legal right to revolution because revolution brings in anarchy and causes more harm than good to the community.

Sec. 4 (a). Relation between Liberty and Sovereignty.

It is sometimes argued that the idea of sovereignty is antagonistic to individual liberty. Sovereignty, no doubt, implies the supreme power of the State to control the actions of citizens; but this does not necessarily mean that a sovereign cannot recognise individual rights without causing self-destruction. Indeed, by recognising such rights the sovereign can invoke the willing co-operation of the people and thus secure peace and good government. Again, recognition of certain rights by the State implies that the

sovereign will assist in the enjoyment of these rights and punish those who stand in the way. Thus we see that individual rights are respected simply because behind these rights there is the supreme authority of the State. Sovereignty of the State is, therefore, the guarantee of individual liberty and a wholesome compromise between them makes for an orderly government. An individual cannot justly claim any right which is not maintained by the State. He cannot claim any right as against the State which is the repository of sovereign power. This does not mean that he has no right as against the Government, which merely acts as an agent of the State.

Sec. 5. Civil Liberty : Relation between Law and Liberty : Guarantee of Civil Liberty.

The civil liberty, we have already seen, means a liberty which an individual enjoys in a State. It assumes an organisation which allows an individual to enjoy his rights in a manner which does not interfere with the rights of others. The State lays down laws both public and private, in order to guarantee such liberty of the citizens. This brings us to another important question whether laws and regulations of the State are antagonistic to liberty. There is one school of political thinkers viz., the Individualistic writers who vehemently oppose all kinds of positive regulation and restrict the State functions to redressing rather than preventing wrongs. They are of opinion that maximum of legislation means minimum of liberty. This view of the law and its effects upon liberty is erroneous, because well-directed legislation often enlarges the scope of liberty by removing the obstacles which the strong and self-seeking persons are always trying to place upon the liberty of the weaker people. As Gettel says, "Liberty alone is anarchy and destroys sovereignty." Again, freedom and restraint are equally important factors in the development of human character. The State should make laws in order to secure equal liberty to everyone. There must be private laws which regulate the conduct of citizens and which guarantee individual liberty against other individuals or associations of individuals. Again, the sovereign State should guarantee individual liberty against the Government by laying down rules which regulate the conduct of its officers. These rules represent the public law of the State. In the United States which possess written constitution these guarantees of individual liberty are embodied in the constitutions while in the United Kingdom they exist partly in statutes and partly in conventions and customs. In England where there is a rule of law the personal liberty is guaranteed by the courts of

The State
guarantees
civil liberty.

In England
the civil
liberty is
guaranteed
by the courts.

law which can give relief against the executive authority. In the United States the Federal Courts try offences committed by the executive and the legislative authorities and in this way guarantee individual liberty. In France, however, the individual is absolutely at the mercy of the Government because here the administrative courts composed of high executive officials try offences committed by the Executive. The best guarantee of civil liberty therefore lies not in mere declaration but in the provision which the State makes for the speedy remedy against encroachment on liberty either at the instance of the Government or at the instance of a private individual. There will surely be no such guarantee if the wrong-doer himself is allowed to judge whether any wrongful interference on such liberty has taken place and what relief the aggrieved party is entitled to get. The best course, therefore, is to secure the independence of the Judiciary and to empower the latter to investigate cases of executive interferences in the domain of individual liberty and to afford adequate relief to the aggrieved party. Such guarantee is greater in democratic States than in totalitarian States where sovereign power is exercised by a dictator.

Sec. 6. Elements of Civil Liberty : Limits of Liberty.

The scope of civil liberty is not the same everywhere. Every State has defined the rights of its citizens in its own way and adopted distinct means of protecting their rights; but the extent of individual rights and the method of guaranteeing such rights in a way measure the development of States. A more advanced State will confer greater rights upon a citizen than a less advanced State. The English enjoy higher rights than the Russians. Again, with the growth of political consciousness the civil liberty is expanded. The citizens of the State must develop their intellectual and moral capacities before they can command new rights. It is the duty of the State to see whether the citizens are really competent to exercise the rights which they are demanding. The State is justified in imposing such limitation on individual liberty as is necessary for maintaining a uniformity of conduct among people and for promoting the highest economic and social good. Again, mere imposition of limitation will not do. The State should apply force to curb the anti-social and anti-economic conduct of an individual when such conduct exceeds the limit of individual liberty.

The rights which the modern States generally allow their citizens to enjoy include the following :—(a) Right of life and liberty, (b) Right of property, (c) Freedom of thought and discussion, (d) Freedom of worship and conscience, (e) Right of association, (f) Right of contract, (g) Right of family life and (h)

Certain civil rights.

Freedom of action. Let us have a rough idea of what each of these rights means, the extent of such rights and the manner in which they are guaranteed.

(a) *Right of Life and Liberty* :—Right to life is the most important, because all other rights will be useless if the life of the individual is not safe. This right includes not only the right to live but also the right to defend one's self against attack. This right has in some States been guaranteed by inflicting capital punishment upon the murderers, but recent tendency is to recognise the right to life even in the case of criminals and to make provision for transportation. Not only murderers are punished but also provision has been made for the punishment of those who attempt to commit suicide. Individuals have been given the right to protect their life by an exercise of force which may kill others. This solemn right to life may be suspended in times of war when the State requires the sacrifice of human life for a noble cause.

(b) *Right of Property* :—Although the States differ in their views of private property and what it should include, they are at one in recognising certain amount of private property and attempting to guarantee the right to such property by means of laws and regulations. The right is based upon an ethical idea that property is essential to the realisation of the moral ends of man. The right is not absolute and may be suspended in times of war. There is also a provision in some States for confiscating the property of the criminal.

(c) *Freedom of Thought and Discussion* :—The right implies that an individual has a right of thinking in his own way and of speaking out or publishing his thought to others so long as he does not violate any law of the country. Man is possessed of reason and it is highly improper that he should not be allowed to communicate his thought to others and to put his thought to public criticism. Again, interchange of ideas helps the development of intellect and contributes greatly to social union. The State, again, will have the advantage of placing its views to public criticism and of regulating its law according to the will of its citizens. If there is freedom of speech and discussion, the governing authorities will think twice before adopting a policy which is unfair and inequitable. These are the reasons why every State should allow its citizens to enjoy this right; but the citizens should use this right with caution. They are to use this right in a manner which does not interfere with the rights of others. This brings us to the question of libel and defamation. Every one has a right to keep his reputation in tact. Truth of a statement is no justification for its publication unless the speaker can prove that it is true and that it has been made

in the public interest. Similarly, the individuals should not exercise this right in a manner which impairs the stability of the State. The citizens should avoid those speeches and should not publish anything which intends to bring hatred or contempt or excite disaffection against the Government. In England this right is guaranteed by the rule of law. Every citizen is entitled to speak, write, print and publish his thought provided he does not violate the existing laws. Press offences are tried in the ordinary courts by a judge and the jury. In India the Government does not require that writings must be submitted to any censorship before publication and individuals are entitled to express and publish their opinions if they do not break the existing laws. The press offences here are tried by the ordinary courts.

(d) *Freedom of Worship and Conscience*:—In most of the modern States this right has been recognised. Even in States where there are State Churches there is complete toleration in matters of religious faith. People can exercise their right of conscience only with this limitation that the conscience must be consistent with the laws of the State.

(e) *Right of Association*:—Man is a social being and it is improper on the part of the State to withhold from him the right of association. Again the State itself is nothing but an association. All associations are allowed to exist provided they do not intend to subvert the existing government by unconstitutional means and do not impair the moral progress of the State.

(f) *The Right of Contract*:—The modern State recognises this right because contract is the basis of society and is essential to material progress of the State. The State, however, has imposed certain restrictions on the freedom of the contracts for illegal and immoral purposes as well as those which endanger the stability of the State.

(g) *The Right of Family life*:—The right includes the rights of husband and wife, the right of the parents over children, the rights of children, and the right of inheritance. The State has to recognise these rights with a view to promoting morality and to securing domestic peace and happiness.

(h) *Freedom of Action*:—This freedom is essential to the development of personality of the individuals. It implies that each individual must have the right to choose his line of action so that he may develop his latent faculties. The State must not interfere and put restriction on the choice of profession.

Sec. 6(a). How To make the best Use of liberty: The Positive and Negative side of such use.

Liberty of an individual within the State never means his abso-

lute right to do whatever he pleases. This is because he has to enjoy his liberty in a society where his fellow members enjoy similar liberty. He has therefore to exercise utmost caution and scrupulously watch that his liberty does not clash with the similar liberty of other people living within the State. This is the negative side of the use of liberty.

The use of liberty has a positive side too. When each individual is conscious of the extent of his liberty, each will be in a position to develop his faculties in full with the result that the State will attain an all-round development in all spheres of human activity.

↓ Sec. 7. Political Liberty. "

Political liberty implies the right of the people to participate in the affairs of the government. The Government is to carry on its functions in accordance with the will of the people and this is possible only when people have right to express their opinions either directly or indirectly through their representatives. In every democratic form of Government this right has been guaranteed by allowing people to participate in the management of Government. In small States the citizens can meet in a place and express their opinion on the functions of the Government, but in big States people have been given the right of sending their representatives who are expected to govern according to the will of those whom they represent. Again, in some modern States the systems of referendum, initiative and recall have been introduced with a view to securing the right of the people to have a direct share in the affairs of the Government.

One important thing that we should note in this connection is that modern democracy does not represent the best method of guaranteeing the political liberty of the citizens. First, the modern method of election does not always secure the representation of minorities; Secondly, democracy has the chance of bringing mob rule which often means rule of the illiterate persons. Democracy has its dangers and has sometimes restricted the liberty of certain sections of the citizens with a view to promoting the interest of other sections. Thus there is no necessary connection between democracy and political liberty.

Nevertheless we do not find any other form of organisation which can secure the greatest possible fusion between the legal and political sovereignty. The tyranny of the Legislature should be avoided by providing necessary safeguards in the constitution and

There is no other form of organisation which secures liberty.

by organising the three departments—the Legislature, the Executive and the Judiciary in such a manner that one can check the other. At the same time an attempt should be made to know definitely the popular will with reference to which the administration is to be carried on. This we will scarcely be able to find out unless steps are taken for the adequate representation of every section of community and for giving full effect to the popular will by means of initiative, referendum and recall.

Sec. 8. National Liberty.

The term is a synonym of autonomy or independence. People have this right when their rights are not controlled by foreigners and the community to which they belong is independent of foreign control. In every State—a State in the true sense of the term—there is National liberty for its citizens. India has in recent times come to realize what is known as national liberty. Recently, there has been a change in the colonial policy of Great Britain and certain colonies have been given certain amount of autonomy in the matter of internal government, but this autonomy cannot mean complete national independence.

Sec. 9. Public opinion: Conditions favourable to its growth. Relation between Public opinion and Legislation.

By public opinion we mean an opinion which has found general acceptance in the midst of divergent and incoherent fancies and beliefs in a particular community. The more generally an opinion is held, the more public it would be. In determining such opinion we shall not insist upon unanimity because it is scarcely possible that all persons will think alike. Nor does it mean the aggregate of the views people hold regarding a particular matter of administration. The opinion may be formed by persons, few or many who have cared to enter into the intricacies of public affairs, but the opinion assumes the character of public opinion as soon as it happens to be shared by the dominant portions of the community and inspired by a sense of well-being of the society as a whole. An opinion which disregards the interest of the minority does not spring from such an inspiration and cannot claim to be a true public opinion.

How to determine it.

In a true democracy there must be a close relation between public opinion and legislation. The representatives who have been sent to govern the country in accordance with the will of the people cannot safely ignore public opinion through which the will of the people finds

Democracy and public opinion.

expression. This happy state of things will ensue when there is an intelligent and alert public opinion to guide and control the authorities that rule. This brings us to the discussion of the various agencies for the healthy growth of public opinion. These agencies are (1) Educational institutions, (2) The Free Press, (3) Platforms, (4) Parties, (5) Cinema and the Radio.

(1) *Educational Institutions*:—These institutions play an important part in the formation of public opinion. They attempt to develop the mental faculties of students and enable them to form independent opinions relating to matters of studies. The best result may be achieved if the curricula of studies are wide enough to include the economic and political histories of nations that have already made a headway in world civilisation.

(2) *The Free Press*:—This is an important agency inasmuch as it enables people to think independently and to publish their thoughts for inviting criticism. When the original opinion has been modified in the light of the criticisms, it may find general acceptance and thus become true public opinion. In order to secure this the Press must not give undue prominence to sectarian view and must be fair and honest in the discharge of its onerous responsibility.

(3) *The Platform*:—This is an important instrument and in a country where people are mostly illiterate it is the more effective instrument than the Press. The expressions of an able orator are generally impressive and go to create public interests in political question.

(4) *Parties*:—The political parties play an important part in educating the people in current politics by placing before them the view they uphold and the criticisms of the views which their opposite camps entertain.

(5) *Cinema and Radio*:—The importance of these instruments in the expression of opinions cannot be exaggerated. In a country like India where illiterate people cannot know the views on matters of public importance through the Newspapers, these institutions have been successfully imparting political training and enabling the people to form independent opinion of their own or share the opinion which has been generally accepted.

Sec. 10. Flight of Liberty from Modern State.

Individual liberty can have free scope for development in a State where the principle of democracy is in vogue. In many modern States we find that democracy has failed to command support and Dictatorship has usurped its place. The dictators have revolutionized the order of the day and imposed severe restraints on the civil liberty of people. These dictators have absolute con-

Liberty and
dictatorship.

trol of the governmental machinery and compel obedience to their arbitrary dictates by means of the brute force at their command. Under such a state of things people cannot have those fundamental rights—freedom of thought and discussion, freedom of association and freedom of movement—which are essential to the development of personality and go a great way in elevating the character of the State. The dictators are proud of their position and physical power and cannot tolerate even a dissentient voice. Hence, utmost care is taken to suppress opinion which opposes them and sows the seeds of rebellion. In countries where democracy still holds good we find a tendency on the part of the Government to suppress freedom of thought and discussion in order to maintain its position and prestige. Again, certain executive authorities have been authorised to exercise judicial power and the citizens who are aggrieved by such a quasi-judicial order have been denied any remedy in the ordinary courts. This pre-eminence of the Executive cannot guarantee individual liberty.

There are also other causes which have hastened the decline of individual liberty. One such cause is to be found in the growing apathy and indifference of an individual in politics.

The present-day imperialistic policy has created an atmosphere of hostility and added new complexity to the problem of national defence. The sovereignty of every State is in danger and can only be maintained if people forget their difference and opposition and blindly support the existing authority in all its measures. This forced unanimity is inimical to the growth of individual liberty.

The growth of party government and the huge propaganda for the Publication and support of its views through the agencies of the Press and platform have stifled the growth of independent public opinion in a State. Such a mechanized atmosphere which induces people in all possible ways to swallow the opinion of the party in power gives little opportunity to people to think independently and assert their influence on the State.

✓ Sec. 11. Equality: Its relation with civil liberty.

By equality we mean equality in spheres, civil, political and economic. In civil sphere equality means equal rights for every citizen. The fundamental rights should be open to all. The State must not be a respecter of persons and scrupulously remove all barriers which go to impose restriction on the legitimate rights of a certain section. No class of people can be regarded as untouchables and public places of worship should be open to all.

In the political sphere every citizen must be allowed to participate in the affairs of the Government. Each citizen should

be given the right of franchise. In the economic sphere there should be true economic freedom which means complete freedom in the choice of profession. Every man must be ensured that minimum which is sufficient to keep body and soul together. Some writers urge for equality in income but this is an impossible task for any State in view of the difference in talents.

Let us now turn to discuss the relation between liberty and equality. Tocqueville tells us that liberty is antagonistic to equality. The *laissez faire* doctrine will surely enable a few talented persons to accumulate wealth. This will bring in inequality of wealth. Again, equality infringes the freedom of action on the part of the talented persons.

The relation between political liberty and equality has been correctly stated by Prof. Laski. Inequality in the economic sphere tells upon equality in the political sphere. It throws supreme power in the hands of persons who are economically richer. The rich can spend profusely during election campaigns and success in election in these days depends greatly upon the extent of purse of the candidate.

Questions and Answers

Q. 1. What is meant by the term 'liberty'.. (C. U. 1939).

Ans. See Sec. 1.

Q. 2. What do you understand by liberty and how it can be secured? (Nag. 1934).

Ans. See Sec. 3.

Q. 3. What are the various meanings of the term 'liberty'? Which of these do you prefer and for what reasons? (All. U. 1930).

Ans. See Sec. 1.

Q. 4. Criticise the doctrine of natural right. How does the conception of fundamental rights of the individual in some of the modern constitutions differ from it? (Pat. 1934; Ag. 1939; All. 1941).

Ans. See Sec. 2.

Q. 5. Distinguish between Civil and Political liberty and indicate the contents of civil liberty. (Bom. 1937; Dacca 1935).

Ans. See Secs. 6 and 7.

Q. 6. Criticise the doctrine of natural right. (Pat. 1934).

Ans. See Sec. 3.

Q. 7. Explain the term 'liberty' and justify the remark that sovereignty and liberty, far from being contradictory, are correlative terms. (Bom. 1941).

Ans. See Sec. 4(a).

Q. 8. Define 'Equality'. In what extent does the realisation of civil liberty depend upon economic equality. (Bom. 1938 ; Ag. 1938).

Ans. See Sec. 11.

CHAPTER IX

LAW

Sec. 1. ✓ Definition of Law.

In political science we are concerned with what may be called the lawyer's conception of law. According to Austin, an eminent

Austin's definition. English lawyer, law means the command of the determinate human superior whom he calls sovereign. This definition has been criticised by

Sir Henry Maine on the ground that it excludes the body of customary laws which are not commands of the sovereign power but which are nevertheless obeyed. This definition also excludes equity and international law from the domain of law. Professor Holland gives the most scientific definition of Law thus:—"A law is a general rule of action, taking cognizance only of external acts, enforced by a determinate authority which authority is human and among human authorities is that which is paramount in a political society; or briefly, a law is a general rule of external human action enforced by a sovereign political authority" If this definition is analysed we find that two things are essential to the existence of law:—First, there must be a body of rules of action; secondly, there must be a sovereign power to enforce obedience to those rules. The sanction behind law is the punishment which the State imposes in case of breach.

The above view of the Analytical School of Jurisprudence is not supported by the Historical school. Woodrow Wilson is of opinion that law is the creation not of individuals but of the special needs and that no law-maker can thrust upon a people laws which

are not supported by public opinion. The State does not create law. It only formulates and interprets the law.

Sec. 2. Classification of Law. ✓

In a State citizens are given certain rights to enjoy and the primary function of the State is to guarantee these rights of the citizens both against private persons and against the officers of the State. The State, therefore, has to frame laws which will enable it to perform these functions satisfactorily. Laws which define and regulate the rights existing between one subject and another are called private laws and the laws which define the power of the Government and regulate the relation of individuals with the State may be designated as public laws. Laws may be divided into Common Law and Statute Law. The former owes its origin to custom and is legally enforceable while the latter is created by the ordinary law-making body.

Both public and private laws may again be subdivided into substantive and adjective laws; the former defines the rights of individuals while the latter indicates the procedure by which these rights are enforced. The public law, again, has been subdivided by Professor Holland into (1) Constitutional law, (2) Administrative law, (3) Criminal law, (4) Criminal procedure, (5) The law of the State considered in its quasi-private personality, (6) The Procedure relating to State so considered.

The Constitutional law defines and explains the structure of the Government and the relation between the various organs and prescribes the limits within which the powers of Government can be exercised. The constitutional laws may be either written or unwritten.

The Administrative law:—In the widest sense this term is used to mean a body of rules which define and regulate the functions of the various organs of the sovereign power in a State but the term is generally used in a narrower sense to mean a law which exempts the public officers from the jurisdiction of ordinary courts of justice and makes provisions for their trial by a separate tribunal. This system of law is in vogue in France and some other continental States of Europe.

There is another kind of law which we cannot ignore because of the important part that it plays in modern civilisation. This is the International law. It is a body of rules which regulate the rights between State and State. This law is not law in the strict sense of

the term, because there is no authority to enforce obedience to it. It is described as law only by courtesy.

There is one more kind of law. This is ordinance which is of the nature of an administrative order and has the force and effect of law for a limited period of time.

Sec. 3. The Sources of Law.

Law, as we find it to-day, has passed through various stages of development and several factors have contributed to its development. These factors may be described as the various sources of law viz., (i) Custom, (ii) Religion, (iii) Scientific commentaries, (iv) Adjudication, (v) Equity and (vi) Legislation. The first three sources indicate according to Professor Holland, the remote causes which have brought into existence rules that have been ultimately recognised by the sovereign authority and have thus acquired the force of law. The rest of the sources represent the organs which are authorised by the State to recognise existing rules which deserve such recognition.

(i) *Custom*:—Custom is or has been the most important source of law. Two questions deserve consideration in this connection:—First, how custom comes into existence; secondly, how it is transformed into law. Sometimes people choose a particular course of conduct because it is convenient for them to follow it. Thus, custom which means a particular course of conduct followed by the members of a community comes into existence and acquires new strength and sanctity as it is handed down to generations. Again, custom has sometimes grown quite accidentally and continues because people are accustomed to follow it.

As State came into existence, it recognised some of the customary rules which satisfied a certain standard of general reception and usefulness. In this way customary rules which were formerly founded upon public opinion came to have legal force. As to the movement when their career as law commences, the opinions are divided. Austin is of opinion that custom becomes law from the very moment when it obtains the status of law and is recognised as such in a court of justice. There are other writers who hold the contrary view and say that courts give operation to custom not merely from the date of recognition but also retrospectively, and that this implies that custom was law before it obtained judicial recognition.

In almost every modern State we find instances of customary

laws. There are the common laws in England. In India the Koran and the Codes of Manu represent such customary laws.

(ii) *Religion*:—Religion is another important source of law. The customary laws of ancient times were closely connected with religion. King was looked upon as a representative of God and the laws were regarded as his gift. People thought twice before disobeying any law because they knew that the violation of law would hamper their salvation. The influence of religion on laws of the Hindus and the Mahomedans will be clear if we go through these laws.

Customary
laws and
religions.

(iii) *Scientific Commentaries*:—The important parts which scientific commentaries play in the development of law cannot be ignored. The judges are often in difficulty either because a particular case is not covered by the existing laws or because the law is ambiguous. The commentators come to their help, interpret the existing laws, remove the ambiguity and deduce principle to govern particular cases. The opinions of commentators are generally accepted by the judges in almost every country. In England great importance is attached to the commentaries of Coke, Hale and Blackstone. Similarly, the opinions of the commentators on the Hindu Law and on the Muhammedan law have been held in great esteem.

The functions
of the commen-
tators.

(iv) *Adjudication*:—Adjudication means the decisions of courts. In modern times the courts of justice have been empowered to make rules for cases which are not clearly covered by the existing laws. The opinions of the commentators are consulted and the judges either accept the opinions or form their own opinions about what should be the proper interpretation of the existing laws. In this way particular cases are decided by the judges. When similar cases come before them for trial, the previous decisions are relied upon and accepted by the subsequent judges as precedents.

Judicial
decisions.

(v) *Equity*:—As civilisation advances, the positive laws of the country ceases to hold good under new condition. Thus a necessity for supplementing the existing laws is keenly felt in almost every State. It is not always convenient to ask the Legislature to pass a new act whenever the existing laws are found to be incompetent to give relief in a particular case. The States, therefore, have adopted an informal method of adding to or altering the existing laws. Equity represents that informal method of making and altering laws according to one's conception of justice, equality

How equity
came into
existence.

Jus Gentium. and fairness. The *Jus Gentium* which was applicable to the foreign people residing in ancient Rome was based upon Equity. In England there is the court of Chancery which is the supreme organisation for the administration of equity. The Indian courts have been authorised to decide cases according to equitable principles in the absence of positive law on the point.

(vi) **Legislation:**—This is at present the primary source of law in almost all civilised States. In every form of Government we find a legislative department which is entrusted with the formulation of law in accordance with the requirements of the citizens. In making laws the Legislature has to take into consideration custom, religious opinions and equity.

Sec. 3(a). Is there a common legal conscience in mankind? The Law of Nature.

Man is possessed of reason and it is this reason which guides him in his activities in this world. The laws of a country are based upon reason and gives out a reasonable interpretation of things and relations. The result is that little or no difficulty is felt in enforcing obedience to laws. The majority of the people are influenced by a moral compulsion to obey the laws because they consider them as just or expedient. Thus we see that the moral nature of man and his conscience guide him in the right direction and prompt him to obey the laws in apprehension of a chaotic condition which any breach or violation thereof may entail.

This legal conscience which we may call a divine gift to mankind and which gives man the foremost position in the animal world lies at the bottom of all customary and man-made laws. The judges, again, are authorised to supplement these laws by passing judgments based upon reason and good conscience. The legislators have their own reason to guide them in the spheres of law-making and may conveniently regulate their actions with reference to public opinion which, again, reflects the reason and conscience of the people.

This conception of a common legal conscience in mankind is as old as the Greek philosophers who were of opinion that a number of fixed rules could conveniently regulate the actions of men. These fixed principles were called the Laws of Nature which according to Plato and Aristotle were founded upon natural justice. Later on the Stoics came to interpret these laws as the manifestation of the single and homogeneous spirit of the world and advocated that

Conscience
of the judges.

An old
conception.

laws of the land should conform to the divine reason which pervades all natural phenomena and is implanted deeply in mankind. This Stoic philosophy exerted immense influence on the legal system of Rome and led to the origin of a system of laws known as *Jus Gentium*, which being based on the principle of nature and reason was applicable to all nations.

This common legal conscience finds recognition in the system of Jury trial which is in vogue in every civilized State and forms the very basis of International law. Uniformity which pervades the different systems of law is another proof that mankind is guided by the Law of Nature.

*The Concept of the Law of Nature has been criticised on the following grounds:—*First, it is not law at all because it has no sanction behind it. Secondly, it is historically untrue. History does not point out any particular period when people were guided by the Law of Nature. The Law of Nature has no visible existence. It derives its sanction from divine intention which is unknown and unknowable. It assumes a perfection of human nature and institutions which is still to be achieved.

Sec. 4. The development of Law in the West.

Modern law in the continental countries of Europe is the product of the fusion of Roman and Tutonic institutions. The Roman Law gradually prevailed for several reasons. Roman law was different from the Tutonic law in this sense that the former meant a law of a unified State while the latter was the law of tribes. In the palmy days of Rome, the Roman law attained considerable development. Twelve Tables were laid down and these supplemented by the edicts of the Praetors and the Jurists assisted in the administration of justice. As Rome obtained control over foreigners, a new body of law known as the *Jus Gentium* came into prominence and regulated the rights of foreigners in Rome. When Rome was conquered, the Tutonic races brought their own laws but they allowed the Roman citizens to continue with their own law. The Roman law gradually prevailed against the various Tutonic laws and it was adopted everywhere as the law of the land. There were several causes which contributed to the diffusion of Roman Law. First, the Roman codes which provided a ready means of reference in cases of disputes were introduced by the Tutonic rulers to various countries under their control and were frequently referred to by other States in administering justice. Secondly, the Roman law was written in Latin which was then the medium of intercourse among the higher classes. Thirdly, the Church was essentially Roman in organisation and spirit. Fourthly, there was a systematic study of Roman law in the colleges and the lawyers were trained in Roman law. Fifthly, the Roman law

possessed the virtue of unity and system. Sixthly, the compilation of the code of Napoleon based on the principles of Roman law and its introduction to other countries enhanced in a great measure the popularity of the Roman law.

Although Roman Law became the basis of legal systems of continental Europe, the legal system of the English took a distinct course of development. The English law was mainly based upon Tutoic customs. The task of developing the law fell upon the judges who decided cases according to customary laws. The decisions of the court were relied upon as precedents and contributed greatly to the expansion of the English law. It should not however be concluded that England was in a position to escape completely from the Roman influence.

Sec. 5. The Development of Law in India.

Before India came under the British control it had a developed system of law mainly based upon customs and religion. There were the Hindu and the Muhammedan laws of inheritance and succession, the customary laws relating to land revenue and the transfer and pledging of property, and certain penal rules. The laws of succession and inheritance were exhaustive but other branches of law were defective and urgently needed reform. The English did not interfere with the laws relating to succession and inheritance but recognised them by passing the Declaratory Act of 1780; but they had to abolish certain pernicious customs such as the Sati system, the system of slavery and several others of similar character. The existing laws were not sufficient to meet the requirements of the time. Codification took place almost in every branch of law. Among the various acts we may mention the *Codes of Civil and Criminal Procedure*, the *Evidence Act*, the *Penal Code*, the *Contract Act*, the *Specific Relief Act*, the *Transfer of Property Act*, the *Succession Act* and the *Easement Act*. These laws have been made mainly on the basis of the prevailing laws of England and the judges are often found to refer to English laws and practices in delivering their judgment.

Sec. 6. Relation between Law and Ethics.

Ethics is a science that deals with morality. The question is whether there is any relation between law and morality. The ancient writers who wrote on natural law confused morality with law. They found no distinction between law and morality; with the progress of political society it became clear that there existed

Ancient writers have confused law with Ethics.

a line of demarcation between law and morality and there were certain laws of the State which were in direct opposition to the ideas of morality.

Law is nothing but an expression of the will of the State. The end of the State is the realisation of the moral perfection of men in society. Laws, therefore, must have an intimate connection with the moral end of man; but the domain of laws is the external action of man and has nothing to do with the inward forces which govern those actions; morality, on the other hand, is concerned not only with these external actions but also with the inward forces which lead to these actions. It demands conformity of human character to a type. Law can enforce certain actions but it cannot enforce the rightness of the will. Morality enjoins that man should be neither mean, dishonest, nor jealous, but law will not punish meanness as such, nor will it punish dishonesty unless this meanness or dishonesty leads to a breach of law. Again, law differs from morality in their sanction. Law is enforced by the State but morality has no sanction behind it except that the public censure and dislike. This brings us to the distinction between legal and moral wrongs. It is not immoral to drive a cart without a light but it is illegal because it affects public safety. Again, safety of the State sometimes requires certain measures which are against principles of morality. To maintain its independence the State may have to engage itself in warfare which leads to loss of lives of its opponents. Nevertheless the end of the State is to promote the perfection of man in society; it has therefore twofold function in relation to morality; first, it should make good laws which add to the moral strength of the community; secondly, it should remove bad laws which affect the moral sentiments of its people and hamper their moral progress.

Laws have bearing with the moral end of man.

Morality is enforced by public censure.

Sec. 7. Relation between Law and Liberty.

There are certain schools of political philosophers who are of opinion that law is antagonistic to liberty. Maximum of legislation, they say, means minimum of liberty. There is some truth in this opinion only when liberty is used in the sense of licence. But that is the most unscientific use of the term and no civilized State will ever allow its citizens to enjoy such an absolute freedom. The laws of a State will scarcely authorise a citizen to do whatever he likes. They will certainly regulate his conduct and force him to act in a manner which is conducive to the welfare of society. Unrestricted freedom is unknown to law. There is true liberty only when a citizen while exercising his own right does not interfere with the

Liberty is not licence.

rights of others with whom he happens to live. Law is a real guardian of liberty. It ensures a course of action which gives equal

Licence is
unknown to
Law.

rights to all citizens. These rights, again, are not the creatures of law. A consciousness of right must precede the formulation of law. Law comes into being in order to protect the rights which

are recognised by the State and assists in the matter of peaceful enjoyment. In the absence of law every citizen will act in a manner which gives him maximum satisfaction at the cost of

Law and liberty
are inter-
dependent.

social welfare. Chaos and confusion will prevail in society and the weaker persons will be absolutely at the mercy of those who are physically stronger. There will be only power and no right.

Thus law and liberty are not opposed to each other, on the contrary they are interdependent and complementary to each other.

Sec. 7(a). Relation between Law and the State.

The law, according to the Jurists of the Positive School, means an expression of the will of the State. It owes its origin to the

The sanction
behind law.

State and can continue its existence so long as the State can compel obedience to it. The only sanction behind the law is the coercive force of the State which makes scrupulous and detailed

provision for the enforcement of law. Judged in this light the State is at once the source of law and its guardian. The law becomes the ward of the State from its very birth and remains ever such a ward.

This view of the law does not find support from writers like Duguit, Krabbe and Laski who assert that the law is above the

View of
Laski.

State and the sanction behind the law is not the coercive force of the State. The law, according to them, means a rule of conduct which men choose to observe in order to derive fully the

benefits of social life. "Law", says Prof. Laski "is, in truth, not the will of the State but that from which the will of the State derives whatever moral authority it possesses". This goes to assign to the State a status which is inferior to that of law founded as the latter is upon the consciousness of men of its social value. The State, again, has got to observe the law in the performance of its function. The State thus becomes the servant of Law, and not its master as the Jurists of the Positive School assert. Krabbe however admits that law emanates from the Legislature which is an organ of the State but the obligation of people to obey this law is dependent upon the appeal which it makes to the people as to its social value.

The above view of the relation between the law and the State

does not truly represent the nature of law. In fact the law emanates from the State which alone is sovereign and law cannot but occupy a position which is inferior to that of the State. Again, the State no doubt obeys the law; but in this case obedience is a matter of choice and can never be enforced by any authority.

Sec. 8. Rule of Law.

According to Dicey the rule or supremacy of law is a characteristic of the English constitution. The expression 'rule of law' conveys according to him the following three kindred conceptions, viz., (i) that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land; (ii) that every man whatever be his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdictions of the ordinary tribunals; (iii) that the laws of the constitution are not the source but the consequence of the rights of individuals as defined in the judicial decisions and enforced by the courts. The constitution itself is the product of the ordinary law of the land.

The above enunciation of the rule of law makes it clear that all subjects in England enjoy an equality of status which is unknown to people of continental Europe. The right to individual freedom in England is inherent in the law of the land and cannot for that reason be destroyed except by a revolution in the institutions and manners of the nation. Another implication of the rule of law is that there exists an inseparable connection between the means of enforcing a right and the right to be enforced which is the strength of judicial legislation. The Habeas Corpus Act which prescribes the machinery for enforcement of individual rights is the best guarantee of individual liberty.

This rule of law can operate successfully only when the Judiciary occupies an independent position and enjoys freedom from dictation by Administration and freedom from control by Parliament.

The Rule of Law as enunciated by Dicey has been modified in England and U. S. A. by a series of legislations enhancing the power of the Executive. The Public Authorities Act of 1898 protects the officials from being sued for certain acts done in their official capacity. Similar immunity is enjoyed by the judges for their judicial acts. Certain executive departments have been associated with discretionary powers the exercise of which cannot be challenged in courts of law.

Sec. 9. Droit Administratif.

In the words of Dicey it may be best described 'as that portion of French law which determines (i) the position and liabilities of all State officials, (ii) the civil rights and liabilities of private individuals in their dealings with officials as representatives of the State and (iii) the procedure by which these rights and liabilities are enforced. It rests on two fundamental ideas viz., (i) that the Government and every servant of the Government represent the nation and possess as such representatives a bundle of special rights, privileges and prerogatives denied to a private citizen and can have the extent of these rights, privileges or prerogatives determined on principles different from the considerations which fix the legal rights and duties of one citizen towards another, and (ii) that the Government, the Legislature and the Court should not encroach upon one another's province so as to maintain the so-called separation of powers.

From the above two basic principles of *droit administratif* it follows that there exist in France a separate body of laws determining the relation between the Government officials and the private citizens and a separate tribunal for the enforcement of these laws and that ordinary courts which decide issues between man and man have no jurisdiction to try cases involving points of administrative law. The provision for such a separate code and a separate court is founded upon the conviction that the judges of the ordinary courts will always hamper the action of Government. The ancient English writers condemned the system of administrative courts on the grounds that it gave the Executive free hands to encroach upon the rights of private citizens. The recent development in the organisation and jurisdiction of administrative courts goes to prove that in countries where the administrative courts exist the individual liberty is not at stake.

Questions and Answers

Q. 1. "The safety of the State is its first law and to realise this end it must be above morality." (C. U. 1931; 1942).

Ans. See Sec. 6.

Q. 2. "A law is a command which obliges a person or persons to a course of conduct". Comment on this definition considering particularly the case of (a) customary law, (b) equity, (c) international law. (C. U. 1930).

Ans. See Sec. 1.

Q. 3. Discuss the nature and sources of law. (C. U. 1932).

Ans. See Secs. 1 and 3.

Q. 4. What is meant by law in Political Science? Examine the sources of law (C. U. 1935).

Ans. See Secs. 1 and 3.

Q. 5. What is law? How does it differ from Ethics?

Examine the following statements:—

‘There is a common legal conscience in Mankind.’ (C. U. 1938).

Ans. See Secs. 3(a) and 5.

Q. 6. What is law? What are its sources? Does law exercise both an ethical and physical compulsion. (Nagpur, 1934).

Ans. See Secs. 1, 3, and 3(a).

Q. 7. How does the Rule of Law protect the liberty of the subject? Can the system of administrative law as it obtains in France do this. (Mad. 1930).

Ans. See Sec. 8.

Q. 8. Write notes on Rule of Law. (Bom. 1938).

Ans. See Sec. 8.

Q. 9. “Rights are not the creatures of law but its condition precedent. They are that which law is seeking to realise.”

Ans. See Sec. 7.

(Bom. 1941).

Q. 10. What is precisely the relation between the law and liberty? “The liberty of an individual is not always in the inverse ratio to the amount of State legislation.” Examine this statement. (Ag. 1942; Punj. 1943; All. 1944; Cal. 1939).

Ans. See Sec 7.

CHAPTER X

INTERNATIONAL LAW

Sec. 1. Nature of International Law.

International Law means a body of rules which the independent States are found to observe in their dealings with one another.

The question is whether International law is law in the strict sense of the term. The modern authorities on the point are found to regard International law as law proper on the following grounds ;—(i) The rules embodied in International law are accepted as laws by the States, (ii) there is an attempt to create a definite body for its enforcement, (iii) like the ordinary law the International law rests ultimately on force and (iv) the rules are applied in a legal manner. The Australian School, however, hold a different view. Law, according to them, is a rule of conduct which is enforced by the State. The citizens obey law because violation of law brings punishment. The sanction of law, therefore, is the sovereign power of the State which can enforce obedience. Now what is the sanction of International law? In reality, we find no such International State in this world. The sanction of International law, therefore, is not a sovereign International State. It is obeyed because the State desires to obey it for safety or convenience. There is no other coercive force to enforce obedience save that of morality and public expediency. A State therefore can break the International law any moment it likes. The absence of sovereign authority to enforce obedience leads us to conclude that International law is not law in the proper sense of the term. It is described as law only by courtesy. It is the vanishing point of law or jurisprudence.

In modern times the above view of the nature of International law does not command support. The States have got to obey the International law for the sake of safety and convenience. The sanction behind this law is world public opinion which has assumed importance in modern times and is found to regulate the actions of States. It is no doubt true that the powerful States have sometimes broken this law ; but even the ordinary law of the State is sometimes violated. Thus this occasional violation of International law can be no excuse for denying the International law the status of law proper.

Sec. 2. The Contents of International Law.

The contents of International law may be broadly divided into two classes :—(1) *The law of peace*, (2) *The Law of War*.

(1) The Law of Peace lays down the relations which one State should have with another in times of peace. It deals with the rights and obligations of States concerning the following matters, viz., (i) independence, (ii) equality, (iii) territorial jurisdiction, (iv) personal jurisdiction and (v) diplomacy. The States must enjoy freedom from external control in order that they may

maintain their sovereignty. They must also have equal rights and privileges. The present International law, applies not only to States but also to certain Protectorates or Dependencies which are not free from external control. Such being the case, all the members do not enjoy the same rights and privileges. The modern International law also determines the jurisdiction of the State with reference to the sea-coast, gulf, etc. The personal jurisdiction is allowed to be exercised over all persons, be they subjects or aliens in respect of acts committed by them within its territory. The International law recognises the inherent right of the State to send and its obligation to receive diplomatic agents with a view to facilitating the interchange of views and negotiation of treaties.

(2) The Law of War may be subdivided into (i) law of belligerency and (ii) law of neutrality. The former consists of a body of rules which are applicable to States at war and The law of war. which have been accepted with a view to minimising the horrors of war. The law of neutrality safeguards the interest of the neutrals by prohibiting the belligerents from carrying on hostility with the neutral territory and at the same time asks the neutral States to remain indifferent.

Sec. 3. The sources of International law.

As there are sources of positive law so also International law owes its present state to the following sources:—(i) the Roman *Jus Gentium* which was based upon justice, equity and common sense was called the law of nations. The present International law has followed those principles of Roman law.

(ii) The writings of Grotius and Pufendorf influenced greatly the development of International law. The theory of Law of Nature was the starting point of International law. The modern International law has received a systematic treatment in the writings of Dr. Garner, Hall and Lawrence.

(iii) *Treaties and Conventions*:—These have been the main sources of International law. The utility of treaties entered into between two States for mutual convenience is understood by others who agree to bind themselves by similar treaties. In this way treaties have laid down general principles of International law. In modern times International Conference like Hague Conference and Washington and Lausanne Conferences have made important contributions to International law.

(iv) *Decisions of International Courts*:—The International tribunals Pass judgments on cases referred to them and these judgments are cited as precedents and are incorporated in International law.

(v) *Municipal Law*:—The municipal laws of individual States make provisions for the treatment of citizens of foreign States. The questions of international importance such as naturalisation and extradition are dealt with in the municipal law.

(vi) *Other sources*:—These include ordinances, proclamations and manifestoes issued by various Governments in times of war, the diplomatic correspondence and the opinions of leading lawyers published in State papers.

Sec. 4. The Development of International Law.

Professor T. J. Lawrence conveniently divides the history of International law into three periods. The first period runs from the earliest times to the establishment of Roman Empire. Plato and Aristotle, the well-known Greek philosophers, expressed their views on natural law which became subsequently the social ideal of the Stoics. This idea of natural law was borrowed by the Romans from the Stoic philosophers. Before the establishment of Roman Empire there was the *Jus Faciale* in Rome, but its influence on the development of modern International law was not considerable.

The second period begins with the establishment of Roman Empire and continues up to the Reformation. With the decay of this idea of imperial power the feudal system manifested itself and brought into prominence the idea of territorial sovereignty of the State—an idea which modern International law upholds. The Roman *Jus Gentium* emphasized the idea of equality and influenced greatly the development of International law. Again, the Christian Church which preached humane ideas contributed greatly to the development of this law.

The third period stretches from the Reformation to the present time. With the appearance of new independent States the necessity of international regulation was keenly felt. Grotius published his work on the Law of War and Peace which embodied two important principles, viz., (1) all States are equally sovereign and independent, and (2) the jurisdiction of any one State is absolute within its territory. He was followed by several other writers who dealt with the subject clearly and elaborately. At present there is a tendency on the part of each sovereign State to recognise the rights of other States and the result is that the States are attaching considerable importance to International law and International organisation. The various International conferences and covenants contributed immensely to the growth of International law. Finally, the League of Nations with its permanent court of justice records the highest development of International relations.

Questions and Answers.

Q. 1. Explain what is meant by International law.

(C. U. 1917).

Ans. See Sec. 1.

CHAPTER XI CITIZENSHIP

Sec. 1. Meaning of Citizen: Distinction between Citizen and Alien.

The term 'citizen' is used in various senses. In the literal sense it means the resident of a city. When we speak of the citizens of Calcutta we use the term in its literal sense. In political science the term has been used in two different senses. In the widest sense citizens mean and include all residents of the State who are subject to the State in all matters. This complete subordination to the will of the State distinguishes citizens from aliens. The aliens are residents who owe their allegiance to another State but must obey certain laws of the State in which they happen to reside. They receive the protection of law, the same guarantee in respect of civil rights but they do not enjoy the political privileges. Unlike the citizens the aliens can be expelled when the exigency of the State demands such expulsion. In the narrower sense the use of the term 'citizen' is restricted to those who enjoy political privileges which include the right of franchise and the right to participate in the affairs of the State. In every modern State we find that certain classes of persons are not allowed to enjoy political rights. These unfortunate persons are not entitled to be called citizens when the term is used in the narrower sense. In the United States the word "subject" has been suggested as a suitable term which can be used to mean residents who do not enjoy political rights. In France this unfranchised class of residents is designated as *Nationaux*, while those who enjoy both civil and political privileges are known as citizens. In English law no distinction is drawn between subjects and citizens because all citizens are regarded as subjects of His Majesty.

Sec. 1(A). The Status of an Alien.

An alien is a person who owes allegiance to a State different from that in which he lives or sojourns; while so living or sojourning he is entitled to the protection from the latter State unless he happens to be an enemy alien or proves himself undesirable in the eye of the State. In the former case he must be taken under

custody and in the latter case he deserves expulsion. This rule does not apply to diplomatic agents who do not submit to the jurisdiction of the State in which they happen to reside. When an alien owes allegiance to a friendly State he enjoys full civil rights but no political rights. He can freely acquire and alienate property within the State. For the benefits which he enjoys from the State he has to contribute to the State and cannot claim exemption from payment of taxes.

An alien has been in many States saddled with certain disabilities. He cannot enjoy political privileges nor hold any public office. He cannot be employed in the Army and hold any position of trust and confidence within the State. Some States, again, are found to be very unfair and harsh in depriving the aliens of the ordinary rights of citizens and go so far as to deny their right to acquire property.

Sec. 2. Citizenship how acquired.

There are two general ways in which citizenship is acquired—(1) Birth; (2) Naturalisation or formal grant. The acquisition of citizenship by birth may be based upon either of the two principles generally followed by modern States or upon a combination of both these principles. According to the principle of *jus sanguinis* the nationality of the children is determined by the nationality of the parents or one of them. This principle has been followed by Austria, France and some other modern States. Another principle which governs the acquisition of citizenship by birth is the *jus soli* or *jus loci*. According to this principle the nationality is dependent upon the place of birth irrespective of nationality of the parents. England and the United States follow the principle of *jus soli* with regard to the nationality of children born of alien parents within their territory and the principle of *jus sanguinis* is applied by them to children born of their citizens abroad. The principle of *jus sanguinis* is widely accepted because it is more logical and reasonable than the doctrine of *jus soli* which is a relic of Feudalism and goes to base nationality upon a pure accident of place of birth. But the principle of *jus sanguinis* is associated with certain difficulties in the matter proving the nationality of the parents.

The next way of acquiring citizenship is that of naturalisation. In the narrower sense this method implies a grant of citizenship on the application of a person. The States before granting the certificate of citizenship require fulfilment of certain conditions but they differ in the matter of this requirement. The law of the United States require that the applicant for naturalisation must know English and be

a person of good moral character and attached to the principle of constitution and well disposed to the order and happiness of the same. Nearly all States require a period of residence as a condition of naturalisation. Some states also require that the applicant must make a definite declaration of his intention for becoming a naturalised citizen and must before such naturalisation take an oath of allegiance. Naturalisation, again, may be either complete or partial. France and Belgium draw a distinction between grand naturalisation and ordinary naturalisation. It is only by grand naturalisation that an alien may acquire all the rights of a citizen. In England the British Naturalisation Act lays down that a naturalised citizen is entitled to all the privileges of a natural-born subject except that when he resides within the territory of the State of which he was formerly a subject, he shall not be deemed to be a British subject unless he ceases to be the subject of the State. In the United States the naturalised and the natural born citizens are on a footing of equality in every respect except that the naturalised citizens are not entitled to the offices of the president and the vice-president.

The term 'naturalisation' when used in the widest sense includes modes of acquisition of citizenship other than that by direct grant. Thus naturalisation may take place through marriages. A foreign woman may by marrying the citizen of a State acquire the nationality of the husband. Some States allow a foreigner to be naturalised by his taking a domicile within the State or on his accepting an appointment under the Government. Citizenship may also be acquired by legitimisation by which an illegitimate child born of a citizen father and an alien mother is legitimised. Again, citizenship may be conferred on a large body of persons by the annexation of a new territory through gift, purchase, conquest or other means. Purchase of real estate or acceptance of a public service within the State sometimes leads to the acquisition of citizenship. The term 'naturalisation' must not be confused with a denisation. In England the certificate of naturalisation is granted in accordance with the act of the Parliament while denisation is a grant of the Crown by letters patent. The denizen occupies a position inferior to that of a naturalised citizen in this respect that the former is not allowed to enjoy all the political privileges enjoyed by the latter. A denizen cannot be member of the Privy Council or of either house of the Parliament or hold any higher office or take any grant of land from the Crown.

Sec. 3. Theory of Right: The Rights of a Citizen.

Right means the power of an individual which is recognised

and confirmed by other individuals of a community. It is the power the exercise of which is deemed essential for the realisation of what is best in individuals. The system of rights is thus founded upon the social good a keen sense of which lies at the root of every social organisation. The maintenance of these rights necessitates the creation of the State. Certain rights thus exist before the State comes into being. Again, certain rights are created by the State.

In every State the citizens are allowed to enjoy certain rights but the extent of those rights is not the same everywhere. In democratic States the citizens generally enjoy higher rights. There are certain fundamental rights which the citizens must enjoy in order that they may develop their capacities fully. These fundamental rights may be either civil or political. The most important civil rights include (a) the right to life and liberty, (b) the right of property, (c) the right of contract, (d) the right to family life, and (e) the right of religion.

The democratic States guarantee these fundamental rights by punishing those who infringe these rights.

Another important right which the citizens of democratic States enjoy is their right to be governed impartially and in strict accordance with the laws. In England this right is secured by the "Rule of Law".

The political rights which are fundamental in character and which are incorporated in the constitutions of many a State include (a) the right of franchise, (b) the right to hold public offices, (c) the right to form association, (d) the right to hold public meeting, (e) the right to express opinion on the policy of the Government with the object of reforming it by constitutional means, (f) the right to protection from interference by any foreign State. All these rights must be guaranteed in order that the affairs of the State may be carried on in accordance with the will of those who are governed.

Sec. 3(a). The Duties of Citizens.

Rights and duties are correlative terms. They are two aspects of the same thing. A citizen can claim to enjoy rights only when he is conscious of the similar rights of others. He should exercise his rights with caution and should always bear in mind that his interest is not distinct from that of others. A judicious enjoyment of right is possible only when the citizen knows what his duties are. These duties again, may be either moral or legal. A

Rights and
Duties are
correlative.

his rights with

Two kinds of
duty: (a) Legal,
(b) Moral.

duty is legal when it is prescribed and enforced by the State. It is moral when it is enjoined by public opinion.

A citizen has various duties to perform. Again, his duties are not to the State alone but also to the village, the town, the province, the country and the world. Multifarious duties of a citizen. The most important duty which the citizen has in relation to the State is to obey its laws. Another duty of the citizen is his complete allegiance to the State in all matters. This implies that he should be ready to render any service that the State might demand for the maintenance of its existence. He cannot refuse to be enlisted in the Army when the enemy knocks at the door and an invasion is imminent. Again, it is also his duty to assist the executive officers in the maintenance of peace and order and in the detection and punishment of the criminals. His duty to the State. He should support the machinery of the State and remove defects not by rebellion but by constitutional means. He should exercise his political rights judiciously and pay such taxes as may be levied by the State.

As a member of the family a citizen has certain duties to perform. When he is a father it is his duty to bring up his children and to see that they are educated. His duty to the family. As a member of the joint family it is his duty to secure peace and well-being for all the members. As a member of the village or town a citizen has to take a keen interest in the solution of rural or urban problems. The problems of the village are almost the same as those of the town and have to be solved by co-operation or other forms of organisation. It is the duty of the citizens to assist these organisations in all possible ways.

Sec. 4. Conditions of good Citizenship.

In modern times there is a demand for universal suffrage in almost every State. No doubt people should be given the right to participate in the affairs of the State because the State exists for the promotion of general welfare. Qualities required in a good citizen. But is it desirable that every individual within a particular State should have the same political right? All citizens are not equally competent to bear the responsibility which such rights bring with them. An individual can claim suffrage only when he is gifted with the following qualities viz., (i) intelligence, (ii) self-control, and (iii) conscience. He must have sufficient intelligence to understand the affairs of the State fully and to form individual opinion about them. The more intelligent the citizens are, the more efficient the government will

be. The modern States are seriously trying to introduce a system of universal and compulsory education, because education improves the faculty of citizens and enables them to understand the affairs of the State. Freedom of thought and discussion is also an essential factor inasmuch as it helps the citizens in improving their faculties. Again, a citizen should have the capacity of controlling his own opinion when the majority differ from him. He should obey the laws even when they seem to be unjust. Lastly, his conscience should always lead him in the right path and ask him to sacrifice his own interest for the promotion of general welfare. He should be honest in his dealings and have a keen sense of responsibility. He should exercise his franchise intelligently and scrupulously avoid all sorts of party intrigues..

Sec. 4(a). Hindrances to good Citizenship.

Each State happens to contain citizens who do not possess all the qualities which would go to make them good and useful citizens. There are many hindrances to the development of those qualities. These are:—

(1) *Want of education*:—Many citizens are illiterate and do not know the real interest of the State. They cannot be expected to manage the affairs of the State successfully. Enfranchisement of these illiterate and ignorant persons will bring mob rule with all its serious consequences.

(2) *Self-indulgence*:—Unanimity in all matters is seldom possible and there is often a difference of opinion among them. Under such circumstances no Government can go on unless the citizens know how to control their own passions and submit to the decisions of the majority. There are very few persons who can with patience control their passions.

(3) *Indolence*:—No State can achieve its ends unless the citizens are inspired with a sense of duty to the State; but very few citizens are ready to perform these duties conscientiously. Many of them do not even care to know what their duties are. They are quite indifferent and have no confidence in their ability to be of any service to the State.

(4) *Selfish interest*:—The citizens cannot control themselves when unscrupulous candidates offer a decent price for their votes. These candidates who have thus purchased their seats in the council cannot be expected to work honestly and sincerely for the well-being of the people.

(5) *Party spirit*:—Another hindrance to the growth of good citizenship is party spirit. The political leaders are found to mislead the illiterate people and manage to secure their support in a policy which though conducive to the interest of the party is really harmful.

An attempt should be made to remove the above hindrances by means of remedies both mechanical and ethical. The mechanical remedies mean and include those devices which will go to improve the system of election. The chances of mob rule may be avoided by the adoption of a system of proportional representation. The indolence of the citizens may be removed by making it obligatory on the citizens to cast their votes. The evils of a party government may disappear when the voters are allowed to take a direct part in legislation through initiative and referendum. On the ethical side there must be suitable arrangement for the education of the masses and for familiarising them with the higher ideals of life.

Sec. 5. Loss of Citizenship.

The most common method by which citizenship may be lost is expatriation which means voluntary withdrawal of the citizen from the State of his origin and his naturalisation in the State of his adoption. Most of the States now recognise such right of expatriation on the part of the citizens. France admits such right provided the citizen who intends to expatriate himself has not left unperformed his military services. There are certain States which do not recognise such right. Russia and Turkey deny such right and punish citizens who renounce their allegiance without the authority of the State. The Common Law of England did not allow the citizens of England to abandon their nationality without the consent of the State. The United States which formerly followed the English common law on the point recognised this inherent right of expatriation by an Act of the Congress passed in 1868.

The citizenship may also be lost in the following ways: (i) Marriage of a woman with an alien results in a loss of her citizenship; (ii) Long residence in a foreign State is considered by some States as expatriation of the absentee; (iii) In some States acceptance of service under foreign government, or desertion from the military or naval service of the State leads to expatriation. In some States citizenship is lost on expulsion or dismissal from State service or on judicial condemnation. Citizenship once lost is not lost for ever. A citizen who has renounced his nationality

may revert to his original nationality by making necessary declaration to the effect.

Sec. 5(A). The Indian Citizens. The Extent of their fundamental Rights.

The citizens of the Indian Union mean and include: (i) every person who or either of whose parents or any of whose grandparents was resident in the territory of India as defined in the constitution and who has not made his permanent abode in any foreign State after the first day of April, 1947; and (ii) every person who or either of whose parents or any of whose grandparents was born in India as defined by the Government of India Act, 1935 or in Burma, Ceylon or Malaya and who has his domicile in the territory of India as defined in this new constitution unless he has before the commencement of the constitution acquired the citizenship of any foreign State.

A person shall be deemed to have a domicile in the territory of India when he would have had his domicile in such territory according to the Indian Succession Act, 1925 or when after residing in the territory of India for at least one month files before the District Magistrate a declaration in writing of his desire to acquire such domicile. In this way the Indian Constitution has taken a broad view of citizenship. The new Constitution of India has enumerated a number of fundamental rights in imitation of the similar rights which the citizens of civilised States are found to enjoy.

These rights include: (i) rights of equality, (ii) rights relating to religion, (iii) cultural and educational rights, (iv) right to property, and (v) right to constitutional remedies. Rights of Equality include: (i) prohibition of discrimination on the ground of race, religion, caste, or sex in regard to shops, public restaurants, public entertainment, wells, tanks, places of public resort dedicated to public use or maintained wholly or partly out of revenues of the State, (ii) Equality of opportunity in matters of public employment, (iii) abolition of untouchability, (iv) abolition of titles, (v) freedom of speech and expression without infringing the law of libel, defamation and sedition, (vi) freedom of association, (vii) freedom of assembly, (viii) freedom of movement, (ix) freedom of residence in any part of the territory, (x) freedom of profession, occupation etc., (xi) freedom of acquiring, holding and disposing property, (xii) protection of life and personal liberty and equality before law.

Rights of Religion include freedom of conscience, right to profess, practise and propagate religion, subject to the right of the State to make law for social welfare and reform.

Cultural and Educational rights include the right of every section of the citizens to maintain its distinct language, script and culture, to maintain educational institutions of their choice.

Right to property is recognised and in recognition thereof it is provided that no person shall be deprived of his property save by authority of law. Acquisition of property for public purposes is permitted on payment of compensation.

Right to constitutional remedies includes the right of citizen to move the Supreme Court for the enforcement of the rights enumerated above and the aforesaid court shall have the power to issue directions, orders in the nature of writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of such rights.

Sec. 6. Citizenship in a Federal State : Citizenship in the British Empire.

In a Federal State there is a dual citizenship in the sense that the citizens happen to owe their allegiance to the Federal State as well as to the Component State to which they happen to belong. It should not, however, be concluded that every one who is a citizen of a Component State is also a citizen of the Federal State.

The constitution of the United States provided that all persons born or naturalised in the United States and subject to its jurisdiction were citizens of the United States and that all such persons should be considered as citizens of the several States in which they were resident. There is a constitutional reason why the States may not recognise as citizens persons who have not been recognised as such by the United States. As a matter of fact the States have recognised as citizens a class of persons who are not citizens of the Federal State. The Component States have framed their own law regarding the acquisition and loss of citizenship. The dispute as to which of these two citizenships is paramount was set at rest by the fourteenth Amendment which laid down that the citizenship of the United States was primary and original and the States were asked not to abridge the privileges of such citizenship by laws and regulations.

In the British Empire the citizenship is local. The Self-governing Dominions and the Irish Free State are not willing to designate their subjects as British subjects. They are proud of their respective nationality and the Statute of Westminster, 1931 gives recognition to the claim.

Questions and Answers

Q. 1. What do you understand by a citizen? In what ways is the position of a citizen superior to that of an alien? What important differences concerning the acquisition of citizenship do exist in the laws of various States? (C. U. 1930, 1942).

Ans. See Secs. 1 and 2.

Q. 2. Distinguish between Civil and Political rights. Enumerate some of the obligations of a citizen. (C. U. 1941; Punj. 1939).

Ans. See Secs. 3 and 3(a).

Q. 3. "Rights and duties are two aspects of the same thing." Discuss. (Punjab, 1938).

Ans. See Sec. 3(a).

Q. 4. Distinguish between a citizen and an alien. What are the different methods of acquiring citizenship. (C. U. 1943).

Ans. See Secs. 1 and 2.

Q. 5. Explain the duties or obligations of citizenship. (Punj. 1941).

Ans. See Sec. 3(a).

CHAPTER XII

THE CONSTITUTION OF THE STATE

Sec. 1. Definition of Constitution.

By constitution of the State we mean a body of rules that determine (i) the organisation of the State, (ii) the distribution of powers among the different organs and (iii) the relation between the Government and the governed. Every State must have an organisation through which the will of the State may be expressed and given effect to. This organisation is not always the same but varies according to the nature of the State. Each State has a distinct organisation of its own and has to distribute powers among the different organs so that the affairs of the State may be conducted smoothly and satisfactorily. Again, each State has to guarantee the rights of the citizens against the officers of the Government. For these various reasons the State must follow

The necessity
of a constitu-
tion.

certain fundamental rules according to which its various organs must act for the realisation of the ends of the State. In the words of Dicey, constitution is the product of all rules which directly or indirectly affect the distribution or the exercise of sovereign powers in the State.

Sec. 1(a). The Contents of the Constitution.

The constitution of a State is found to lay down rules :—

- (i) Outlining the organisation of the Government ; (ii) defining the relation which should subsist between the various organs and the powers which each of these organs should exercise ; (iii) prescribing the manner in which each organ should exercise its power ; (iv) defining the rights of the people and making provision for their protection against governmental interference ; and (v) providing for the amendment of the Constitution.

Contents of
the Constitu-
tion.

Sec. 2. The Classification of Constitution.

Every State must, no doubt, have a constitution of its own ; but in some States the constitution is clear and definite while in others it is indefinite. This brings us to the distinction between unwritten and written constitutions. The former represents a type of constitution which exists in the form of customs and conventions while the latter represents a type where most of the rules are contained in a document or in a series of documents. The constitution of Great Britain is unwritten in this sense that most of the important constitutional rules are based upon customs and conventions and cannot be found in a particular document. The so-called written constitutions are to be found in the United States, France and most of the modern States of Europe. In a federal form of Government there generally exists a written constitution, because the component States which agree to form such unions retain rights which must be guaranteed by the federal constitution. This classification of constitution cannot claim scientific accuracy on the following grounds :—First, there is no

Written and
unwritten
constitutions.

The flexible
and rigid
constitutions.

such constitution which is entirely unwritten. Even in British constitution we find certain written documents, such as the Magna Charta, the Bill of Rights, the Act of Settlement and the Great Reform Act. Secondly, the so-called written constitutions do not contain all the fundamental rules of the State to which they apply. Some of these constitutional rules still exist in the form of customs and their validity is not questioned on that ground. In the United States which have got a written constitution there exist many unwritten rules relating to the election, succession, tenure and power of the president.

Another classification of constitutions has been given by Sir Henry Maine. He classifies constitutions into (i) historical or evolutionary and (ii) a-priori. The historical constitution means a constitution which has developed gradually according to historical experience. The constitution of Great Britain represents this type of constitution. An a-priori constitution is based upon certain speculative assumptions. The eighteenth century constitution of France was an example of such constitution.

Bryce in his "Studies in History and Jurisprudence" gives a more scientific classification of constitutions. He classifies constitutions into (i) flexible constitutions and (ii) rigid constitutions. The distinction between these two types of constitutions is based upon the relation which constitution bears to ordinary laws as well as to the authority which passes these laws. When the laws of the constitution emanate from the same authority which passes the ordinary laws and can be amended by the ordinary law-making authority in the same way as ordinary laws, the constitution may be described as flexible constitution. It is called flexible because the constitutional rules can be made or amended easily in response to the requirements of the citizens. The rigid constitution exists in a State where the laws of the constitution originate from a different source and can be repealed only by a special authority. Again, this type of constitution demands that the ordinary laws of the State must not be in conflict with the Constitutional law. The constitution of Great Britain come under the first class while under the second class fall the constitutions of France and the United States of America. The old constitution of India was of the rigid type inasmuch as it could be amended by the British Parliament. The constitution of Germany is rigid on the ground that it is drafted by the National Assembly and the President must order a referendum if the two houses disagree on a constitutional amendment.

A modern classification aims to divide constitutions into two categories :—democracy and dictatorship. The principle of classification is the location of ultimate political authority. When the said authority is vested in the people we have a democratic constitution while in a dictatorship the real depository of such power is the dictator or the Party leader. Democracy, again, may be either unitary or federal in character and for that reason a democratic constitution admits of further sub-division into unitary or federal. Each of these two types may be Parliamentary or Presidential in form according as the Executive is or is not

responsible to the Legislature. This classification has been criticised on the ground that it is very difficult to find out the real depository of political authority in view of the fact that even a dictator is found to consult public opinion.

Sec. 2(a). Strength and Weakness of a Written constitution.

A written constitution is well-known for its clearness and definiteness. A man can get almost all the provisions in a single document or in a number of documents and can easily familiarize himself with them. The judges find no difficulty in applying those provisions because they are often couched in clear and unambiguous terms. The citizens also find an easy remedy whenever their rights are infringed by officers of the Government.

Merits:

It is clear
and definite.

"A written constitution" says Laski "is the only method by which the effective control of powers allotted to the constituent parts of a federation can be guaranteed to them."

The greatest weakness of a written constitution is that it endeavours to record the principle of national life in a single document and does not favour growth and expansion. It is conceived and struck off once and scarcely any attempt is made to preserve continuity and connection with the past. It does not always secure greater liberty for the people. In England which has an unwritten constitution people enjoy greater liberty because of the independence of the Judiciary.

Defects: It
does not favour
growth and
expansion.

Sec. 2(b). The Merits and Demerits of Unwritten constitutions.

Unwritten constitutions are generally flexible in character and possess all the merits of a flexible constitution. They are not struck off at once by a constituent assembly or other body and fully illustrate Sir James Mc. Intosh's dictum 'the constitutions grow and are not made'. The constitutions grow and expand in response to the demands of the nation and seldom lose their touch with the past experience.

Unwritten
constitutions
are flexible.

Unwritten constitutions have also elements of weakness which we cannot overlook. They are indefinite and made up largely of customs and judicial decisions. This presents a serious difficulty to the scholars and lawyers who come forward to study the constitutional laws. Another defect of unwritten constitution is that people cannot place much reliance upon constitutional prescriptions which rest mainly upon customs and usages. This is because

Defects:

They are
indefinite.

the authorities that rule may easily interpret them wrongly and justify their unauthorised conduct.

Sec. 3. Merits and Demerits of Flexible and Rigid constitutions.

None of these two types of constitution represents the ideal type. Each has its elements of strength and weakness. The chief merit of the flexible constitution lies in its adaptability. The laws of the constitution cannot hold good for all times. In the case of flexible constitution these rules can be amended easily by the ordinary process and for this reason no difficulty is felt in adapting the law to the requirements of the country. Again, in the flexible constitution the constitutional rules can easily be framed in accordance with the wills of the citizens. The danger of revolution which is the outcome of popular dissatisfaction is avoided. Another merit of flexible constitution is that it ensures a healthy growth and progress of the State. The laws that hamper the progress of the State can be easily amended and replaced by the laws which are expected to be conducive to the interest of the citizens.

The defect of this type of constitution lies in the fact that it may yield to temporary passions. The Party-in-power, sometimes, may bring about changes in the constitutional law with the object of promoting its ends. It is unstable and cannot guarantee solidity and permanence. The unstable character of the constitution account for a loss of sanctity which is attached to the provision of a rigid constitution. Again, it is argued that flexible constitution is unsuited to a democratic type of government ; but experience tells us that it is not so.

The rigid constitutions have the characteristic advantages of definiteness, certainty and stability. The fundamental rules of constitution remain in force for a long period of time and can be amended with difficulty. Thus the constitutional rules are not liable to frequent changes and are less subject to party-feeling. But the constitutional rules cannot be easily adapted to the requirements of the citizens and the result is that the rigidity of the constitution has been the cause of revolution and popular discontent. Again, the difficulty of amending constitution tempts the citizens to violate the constitutional rules when they are not suitable to the existing conditions. Considering the merits and demerits of each type we find that neither of these two types represents the ideal type. The ideal constitution must be a mixture of these two types of constitution.

Sec. 3(a). Modern tendency towards Rigid constitution.

In modern times we find a tendency towards the acceptance of rigid constitution on account of the following reasons :—

- (a) Modern democracy is very keen to secure a guarantee for the individual rights and this guarantee is ensured by a rigid constitution.
- (b) Modern tendency towards decentralisation and introduction of autonomous local units necessitates a rigid constitution to define the power of the local units.
- (c) The principle of federalism which is gaining ground gradually cannot be given effect to in the absence of a rigid constitution.
- (d) A rigid constitution also claims support on account of its certainty and definiteness.

Sec. 4. Development of Constitutions: Method of amendment.

The laws of constitution can never be permanent but they must grow and develop with change in the conditions of the State.

The rights of the citizens cannot remain the same but should be extended when the citizens can legitimately demand such extension. Again, the existing form of government and the distribution of powers among the several organs may show signs of weakness and some constitutional reforms may be urgently necessary. All these facts tend to suggest that constitutions must grow instead of being made. Every State must make provisions for the healthy growth of its constitution. They may grow in three ways:—(1) by usage, (2) by judicial interpretation and (3) by formal amendment. The part played by each of these three factors is not the same everywhere. In States which have no written constitution and where the citizens are accustomed to revere everything that is old, custom plays the predominant part. Thus we find that the constitution of Great Britain is based mainly upon customs and usages.

The importance of judicial interpretation in the development of constitution can never be ignored. The constitution of United States has been expanded greatly by judicial interpretations and in this way the necessity of making new laws of the constitution has been avoided.

The most important method of expanding the constitutions is to make provisions for formal amendment. In States where the constitutions are flexible, the question of amendment is not very important because the constitution can be easily amended by the ordinary

How constitu-
tions grow—
(i) Usages.

(ii) Importance
of judicial
interpretation.

(iii) Provisions
for formal
amendment.

Legislature in the ordinary way. In States which have rigid constitutions the provision for amendment is generally contained in the constitutions. In some States we find that the ordinary Legislature is entitled to make amendment of the constitution only by adopting a special procedure. Thus in Belgium two-thirds of the members of each house must be present and two-

thirds majority is necessary for the amendment of the constitution. The French constitution is also rigid in this sense that for the amendment of the constitution the two houses of the French

Legislature must sit together as a Constituent Assembly at Versailles. This Assembly which is otherwise known as the National Assembly has got to consider the amendment proposed by separate resolutions by the Senate and the Chamber of Deputies. If this Assembly finally accepts the amendment by an absolute majority of the total number of members, the amendment becomes valid.

In U. S. A. an amendment may be proposed either by the two-thirds of both Houses of the Congress or by a convention called by the Legislatures of two-thirds of the several States.

Procedure
in U.S.A.
and Switzer-
land.

Such proposal must then be ratified by three-fourths of the Legislatures of the Component States or by a convention set up by three-fourths of the States. In Switzerland different procedure is prescribed for complete or partial amendment. In case of partial amendment proposal may be made either by the two Houses composing the Legislature or by 50,000 voters. The proposal then must be submitted to the people and will not be effective unless accepted by the majority of voters. In case of complete revision of the constitution a resolution in that behalf by either House of the Legislature or a demand for it made by 50,000 voters must be submitted to the people who, if they agree, hold new election of both the Houses and authorise them to effect a complete revision of the constitution. In Australia an amendment is to be proposed by an absolute majority of each House of Parliament. If the two Houses differ, the House proposing the amendment may again pass it after an interval of three months either with or without amendment made by the dissenting House. The proposed amendment must then be referred to the electors within prescribed time and will be of no effect unless it is accepted by a majority of all the electors voting and by the majority of States. This method of referring intricate constitutional problems to an uninformed mass is neither convenient nor fruitful. The method of amendment should not be too difficult to admit of elasticity.

Sec. 5. The Unitary Constitution.

A State is said to have a unitary constitution when the various units composing it derive their power from a central authority.

Powers are derived from the Central government.

For the purpose of administration the State may be divided into a number of administrative subdivisions or provinces but these Local governments are created by and derive all their powers from the Central government which has supreme voice in local affairs. Such a form of government prevails in England, France, Japan and in some other modern States.

Sec. 6. The Federal Constitution.

A State is said to have a federal type of government when its territory is composed of a number of administrative units each of which is given a definite sphere of activity by the constitution. There is a division of functions and those which are purely local are given to local authorities for administration while the affairs of common concern are vested in the Central government. The constitution plays the predominant part and regulates the activities of the Central as well as of the Local governments. The local governments are independent of central control and can freely exercise their functions so long as the constitutional rules are not violated. The United States of America represent a federal type of government. There are 48 component States each of which has a distinct local government of its own. These States have one central organisation for the administration of national subjects such as defence, foreign affairs, commerce and currency etc.

Questions and Answers

Q. 1. Define 'constitution'. Why it is necessary for a federal government to have a written constitution? What is the greatest weakness of a written constitution? (C. U. 1923; Dacca, 1935).

Ans. See Secs. 1 and 2.

Q. 2. Define 'constitution'. In what respects do you call the British Constitution a good and in what respects a bad constitution? (C. U. 1933).

Ans. See Secs. 1 and 3.

Q. 3. Distinguish between rigid and flexible constitutions. Are the constitutions of (a) America, (b) France, (c) Germany, (d) England, (e) India, rigid or flexible? Give your reasons.

(C. U. 1920, 1943, 1945).

Ans. See Sec. 3.

Q. 4. What is meant by the constitution of a country? State how constitutional changes can be effected in England, France and United States of America. (C. U. 1932).

Ans. See Secs. 1 and 4.

Q. 5. In what respects does the unitary form of Government differ from the federal form of Government. Illustrate your answer. (C. U. 1934).

Ans. See Secs. 5 and 6.

Q. 6. In what respects does unitary form of Government differ from the federal. Are the Governments of the following countries unitary or federal? (a) Great Britain, (b) France, (c) The United States of America, (d) The British India. (C. U. 1936).

Ans. See Secs. 5 and 6.

Q. 7. Describe and illustrate the different methods of constitutional amendment. (Mad. 1934).

Ans. See Sec. 7.

Q. 8. What do you mean by the constitution of a country? How does a written constitution grow? (C. U. 1940).

Ans. See Secs 1 and 4.

Q. 9. What are the respective merits and demerits of the written and unwritten constitutions. (Bom. 1936).

Ans. See Sec. 2(a).

Q. 10. Distinguish between a rigid and flexible constitution and describe the merits and demerits of each. (Nag. 1934, Dacca 1935).

Ans. See Sec. 3.

Q. 11. What is a documentary constitution? Illustrate from the history of State the purposes for which such constitutions have been created. (Rangoon, 1938).

Ans. See Sec. 2.

CHAPTER XIII

THE THEORY OF SEPARATION OF POWERS

Sec. 1. Theory of Separation of Powers.

In every State there are generally three distinct organs through which the will of the State is expressed and given effect to. There is the legislative department which is concerned with the enactment of laws which the citizens must obey. Mere enactment of laws cannot guarantee liberty of citizens. There must be some

Three
departments
of the State.

authority to determine whether the laws have been violated or not. The Judiciary exists with a view to determining such violation and to applying the laws to particular cases. Again, there is another department which is known as the Executive and is entrusted with the function of enforcing the law.

The theory of separation of powers tells us that the above three branches of the government viz., the Legislature, the Executive, and Judiciary should be separate from one another. The Legislature should be independent of the executive departments; similarly, the Executive and the judicial departments should not be controlled by the Legislature. Each of these organs should be supreme within its own sphere.

The theory has been the outcome of the bitter experience which people of ancient States happened to have during the reign of despotic rulers who used to exercise all the three powers according to their sweet will and pleasure.

The theory of separation was recognised even by the ancient writers of Political Science. In the writings of Aristotle, Cicero and Polybius we find an idea of three-fold classification of the functions of the Government. Bodin and John Locke also advocated a separation of powers. Among modern exponents of this theory the French writer Montesquieu and the English writer Blackstone are important. Montesquieu gives in his 'Spirit of the Laws' a lucid representation of this theory and points out in clear language the evils of concentrating the three powers of government in the same person or body of persons. If the same person is vested with the legislative and the executive functions, he will be in a position to pass Act in order to justify his arbitrary conduct and the result will be that citizens will have no liberty. The same result will follow if as in the case of Collector-magistrate in India the same person or body of persons happens to exercise the executive and the judicial functions. If the Judiciary were joined with the Executive, the judge would have then the force of an oppressor. It is, therefore, desirable that each set of powers should be placed in the hands of different sets of officials who should be independent in their respective spheres.

The theory of separation gained recognition in France and America where it is accepted as a principle of constitution. The theory was also supported by Blackstone and was fully emphasized in his commentaries on the Laws of England.

Sec. 2. Criticism of the Theory of Separation of Powers.

The theory is to be accepted with certain limitations; a complete separation of powers is neither practicable nor

desirable. It is no doubt true that each of the three departments should have its own spheres of activity but sometimes the interest of the State demands that one department should exercise some functions of the other departments. The Legislature cannot make provisions for any and every case that may possibly come before the Judiciary for decision. Should the Judiciary wait till a new Act has been passed making adequate provisions for an extraordinary case? The answer is in the negative. Promptness in administration of justice is urgently necessary. Under such circumstances the Judiciary must be given the right of deciding cases according to their sense of justice and equity and their decisions are practically new Laws which the citizens must obey. Again, the dignity of court must be maintained and for this reason the judges are often given the right of drawing proceeding against persons for contempt of court and inflicting punishment which they deserve. In some States too, the judges have got to maintain peace in addition to their ordinary duty of pronouncing judgment.

Similarly, the Executive department is found to perform certain functions which, strictly speaking, are legislative in character. Thus the Executive authority is vested with the power of vetoing legislative measures and of passing ordinances and proclamations when the exigencies of the State urgently demand them. The Executive, again is found to exercise the prerogative of pardon and thus render ineffective a decision which appear to be unduly harsh.

The Legislature, again, exercises functions which do not strictly belong to its sphere. This organ frames rules which should govern the conduct of the members and enforces those rules.

Another limitation to the strict application of this theory becomes obvious when we study the relation which one of these departments bears to the other. The Legislature cannot be completely separated from the Executive and the Judiciary. All the three departments must act in harmony for the realisation of the end of the State. If each department is completely independent in its sphere and acts in its own way, frequent deadlocks will be inevitable. Some sort of separation of powers there must be but at the same time each department should be allowed to check the excesses of the other. The Legislature should be competent to check the excesses of the Executive and the Executive, again, should be allowed to dissolve the Parliament when it fails to represent the popular will; such a system of checks and balances will make for harmonious working of the constitution. Again, a study of organisation of modern State

tells us that separation of powers is not absolutely necessary to secure individual liberty. Individual liberty is not at stake when the Legislature happens to possess overwhelming power. It is however, admitted that the Judiciary should have some amount of independence so that the liberty of the citizens might be guaranteed against the arbitrary conduct of its Executive.

The theory, therefore, is to be understood only in this limited sense that each department should be concerned in exercising those powers which strictly belong to it. It may happen to exercise powers which do not belong to its province only when the exigencies of State require that it should exercise such powers. Again, in exercising their powers these departments should act in harmony so that the end of the State may be realised.

Sec. 3. Practical Limitations to the theory of Separation of Powers : its applications in India.

If we study the constitutions of different States we will learn at once how far this theory has been applied in practice. In the United Kingdom the Legislature claims an overwhelming power. It controls the activity of the Executive in this sense that the Executive can hold office so long as it has the support of the Legislature. The Executive is thus more or less dependent upon the Legislature and must act in accordance with its will. The members of the Executive are also members of the Legislature and influence greatly the legislation of the State. The Legislature again is found to exercise certain judicial functions. The Parliament acts as a court of impeachment and the House of Lords is the highest Court of Appeal. There is an intimate connection between the Judiciary and the Executive inasmuch as the judges are appointed by the Executive. The Lord Chancellor of England who is the head of the Judiciary is also a member of the Cabinet. The judges cannot act in their own way but have to apply the laws of the State to particular cases. This shows that they are not independent of the Legislature. Again, except in cases where the courts are established by the constitution the courts are generally created and destroyed by the Legislature. In France the relation between the Executive and the Legislature is the same as in the United Kingdom, but the relation between the Executive and the Judiciary differs considerably from that in the United Kingdom. Unlike the English courts the ordinary courts of France have no jurisdiction over the acts of the Executive. In France, therefore, there

Absolute separation does not exist.

Relations in France.

is no such independence of Judiciary which the English constitution contemplates.

In the United States the theory in its strict form does not hold good. The president who is the chief executive officer of the State influences legislation by exercising his power of limited veto and by his annual message to the Congress. Similarly, the upper house of the Legislature performs certain executive functions when it ratifies treaties and approves of important appointments. The Congress exercises control over the Executive by withholding supply of money. In spite of the rigid demarcation of powers which the constitution of U. S. A. emphatically upholds, the very fact that the president and the legislative houses entertain the same political ideas makes for harmonical working of the Governmental machine. The relation between the Executive and the Judiciary is the same as in the United Kingdom but the power of the federal judges is supreme. They can declare any act of the Legislature invalid and unconstitutional. This supremacy of the Judiciary is inconsistent with the strict principle of separation of powers. Such complete fusion is also to be found in dictatorship.

In India we have got a theoretical application of the theory under the Government of India Act, 1935. Here we find the three departments of the government performing their allotted functions but the relation which each of these departments has with the other is too intimate to admit of any strict separation. In fact the theory of executive pre-eminence which holds good in Indian administration has made the Executive all powerful. The Governor-General of India and the Provincial Governors have got the absolute veto on legislation and may enact laws against the clear will of the Legislature by certifying that such laws are required for the discharge of their responsibility for the Government of India or any part thereof.

Again, the chief executive head of the District ordinarily known as the District Magistrate is associated with both executive and judicial functions and has to act both as prosecutor and judge.

Questions and Answers

Q. 1. 'The strict Separation of Powers', says Dr. Garner 'is not only impracticable as a working principle of Government but it is not one to be desired in practice'. Explain why. (C. U. 1924, '32; Dacca 1935).

Ans. See Sec. 2.

Q. 2. Examine the theory of separation of powers. How far it is translated into practice in Great Britain, France, Germany and the U. S. A. (Allahabad 1930; Mad. 1936; Nag. 1934; C. U. 1945).

Ans. See Secs. 2 and 3.

Q. 3. Analyse the constitution of the U. S. A. in the light of the theory of the separation of powers. Is it responsible for any friction in the actual working of the constitution? (Pat. 1934).

Ans. See Sec. 8.

Q. 4. Explain and criticise the theory of separation of powers. To that extent has it found application in the Indian constitution. (Bom. 1941).

Ans. See Secs. 1 and 3.

Q. 5. Explain carefully the statement that 'the system of separation of powers and 'checks and balances' prevent chaos of authority and unify governmental views.' (C. U. 1941).

Ans. See Sec. 2.

Q. 6. What is meant by 'separation of powers'? How far is this separation found in India? (C. U. 1943).

Ans. See Secs. 1 and 3.

CHAPTER XIV

PARTY SYSTEM

Sec. 1. Definition of Political Party.

A political party means a body of persons who entertain the same or similar views regarding the important problems of the State and who are bound to promote the national interest by administering the country in accordance with certain principles which they enunciate. The members of each party holds the same opinion on a particular question of public policy and give up their minor points of difference. Each party must have an organisation which ensure unity among the members and aims at increasing the number of its supporters. The political party which is supported by the majority of citizens gets control of the Government and carries on administration so long as it remains in that proud position. The importance of the political parties in modern democracy can never be exaggerated. Party system is the natural outcome of the conditions under which democratic government is to be worked. A party is to be distinguished from a faction which means a group of persons organised for the promotion of their particular interest.

Sec. 2. Origin and importance of Political Parties.

In modern democratic States there are various parties. These parties differ from one another in their views on political questions.

Various parties. There are the Radicals who want to alter the present institution root and branch while the Reactionaries wish to go back to the ancient state of things. The Liberals differ from the Conservatives in this respect that the former attempt to bring reform while the latter try their utmost to retain the existing state of things. Between these extreme divisions we find the Moderates who share in the views of each of the parties.

Parties have sometimes come into existence with a view to promoting class interest. Thus we find the Labour Parties which have come to occupy a pre-eminent position in the party systems of modern States. They undertake the cause of the labourers and always try to exact from the Legislature their legitimate rights. In modern times different parties come into existence because of their difference of opinion on economic questions. "The parties now represent common interest in occupation, common economic classes or common ideas as to economic policy and regulation. Again, parties have sometimes originated because of the existence of different races in a particular State. The danger of fusion has stimulated party organisation among the different races for self-defence. The Austro-Hungarian union was based upon race. Sometimes a party, has been formed for the promotion of a particular political end. Thus the Irish National party came into being for securing Home Rule for Ireland. Sometimes religious differences gives rise to parties with distinct political aims and aspirations. The Catholic party in Germany is now showing its activity in the political field.

Political parties have come to play an important part in the organisation of modern States. Modern democracy means government by the party in power. Political parties bring harmony. The organisations of parties have led to the formation of a body of persons who agree on important questions and have forced them to give up their minor points of difference. The parties express their views on political questions through the press and platform and thus help the growth of public opinion. Again, although the political parties have no recognition in the eye of law they have contributed greatly to the harmony of action among the different organs of the governments. The principle of separation of powers cannot do great harm in the United States only because the party which returns the majority to the Congress has the greatest chance of electing the president. In the United Kingdom where the Exe-

cutive is responsible to the Legislature, the Executive is formed by the party which commands the majority in the Legislature. In the domain of legislation the party discipline makes for unanimity among the members and thus secures a majority in favour of a particular bill.

Sec. 2(a). The Functions of a Political Party.

The political parties are found to perform certain functions which may be enumerated thus :—(1) Their principal object is to secure a majority of supporters and with a view to achieving the object the party leaders will try earnestly to popularise the principle of government which they enunciate. They influence the public opinion and contribute greatly to the determination of the general will which is the essence of democratic government. They publish pamphlets and engage platform speakers to create interest in politics and impart political training to the masses. (2) They compel the members to give up their minor points of difference and to be unanimous on vital questions of principle. In this way each party tries to formulate and shape the general will and train the people in politics. (3) Each party will also announce the names of candidates and will endeavour to return the maximum number of representatives to the Legislature. It thus guides the voters in the matter of choice of representatives. The candidate, again, has not to struggle much as he has got the support of a party behind him. (4) When this has been done its next function is to give effect to its policy by introducing new laws and by changing the old laws which seem to be pernicious. The party-in-power controls the various organs of Government and secures harmony of action among them. The parties serve the people by placing their grievances before the Government and suggest measures for their removal. When it fails to secure majority it will be found to criticise the measures which the party-in-power adopts with a view to removing the party-in-power from its pre-eminent position.

Sec. 3. The Dual and Multiple party system : Their respective merits and demerits.

In a State there may be two or more parties. When there are only two parties, the State has a dual party system. When the parties are numerous, the system is known as the multiple party system. The dual party system can claim the following advantages :—First, in such a system it is possible for one of the parties to secure absolute majority and the will of the party-in-power may fairly represent the will of the citizens or at best a majority of them. The administration by such a party will evidently be

Services rendered by a political party.

Merits of the dual party system.

more democratic in character. Secondly, the party-in-power will have a large number of followers and this will make for the adoption of a consistent policy which will be conducive to the welfare of the country. Thirdly, the dual party system adds to the stability of the Government and checks the exercise of arbitrary powers by ensuring a regular criticism of its policy. The party-in-opposition is very strong and its effective criticism compels the dominant party to adopt measures which are conducive to the welfare of the citizens. Fourthly, it makes for harmonious working of the different organs of government. In the absence of party organisation the executive will lose much of its present strength and this weakness of the Executive will bring chaos in the sphere of administration.

In every State the voters are organised under different economic groups having different aims and aspirations. It is indeed a very difficult task to bring these divergent groups of people under one or other of the two parties in a State. Prof. Ramsay Muir is of opinion that the three-party system will secure this end by dividing the entire Electorate into the following three types:—
 Weakness of the dual party system. (a) Those who do not desire great changes, (b) Those who desire great changes and want to effect them on Socialist or Collectivist line and (c) Those who desire changes but do not like the Collectivist line.

The tri-party system will make for a more wholesome atmosphere in the Legislature and add to its prestige. It will also curb the power of the Cabinet and prevent it from assuming the position of a dictator which the bi-party system often secures for it.

The dual party system is disappearing from the world. In almost every state we find more than two parties. In England although there are more than two parties in practice there is the dual party system inasmuch as the minor parties usually combine with the more important parties in order to make their existence felt.

In the continent of Europe the dual party system is conspicuously absent. In France there are many parties with the result that no one of them can claim absolute majority. The majority can only be secured by combination of parties and the administration is efficiently carried on so long as the combination lasts. This is the reason why the French ministry has a short life. A coalition Government which depends upon the support of too many parties will invariably form a weaker government and fail to give effect to any long-term scheme. Again, in a coalition government the various Parliamentary groups composing the coalition play

an effective part in the formulation of policy and people cease to have such direct voice in the choice of governing body as they will have in a bi-party system. Prof. Ramsay Muir however is of opinion that this form of coalition government is more democratic than the bi-party system inasmuch as it makes room for different views on matters in issue and ultimately brings about a wholesome compromise. It is also more flexible because new coalition government can be formed without any fresh election. The Multiple Party System goes to reduce the tyranny of the party-in-power and compels the Government to adopt a policy which will contribute to the well-being of the people in general. A coalition Government has little chance of being tyrannical.

Sec. 4. Political parties in Modern States and their organisations.

In this section we will discuss the party systems of England, the United States, France and Germany. In England the parties came into being during the Long Parliament of 1641, when the Round-heads came to oppose the Crown and the Cavaliers supported it. In 1679 these two parties were nicknamed as the Whig and the Tory. The Whigs were supporters of constitutional Government while the Tories supported the absolute prerogative of the Crown. Later on the Whigs were renamed as the Liberals and came to have an enlightened desire for progress and reform. The Tories were renamed as the Conservatives and stood firmly for existing institutions. Next came the Irish National party which sponsored the Home Rule of Ireland and disappeared from practical politics after the achievement of its object. In recent times another party known as the Labour Party has appeared and is gaining ground. This party aims at promoting the welfare of the workers and has combined with the Liberals in order to secure majority in the House of Commons. At present the United Kingdom is controlled by Labour ministry. There are also the Communists or the Radicals who unlike the Labour Party do not want to remove the grievances of the labourers by a gradual progress. In England party government is carried on in a spirit of healthy rivalry to promote the national interest. At times of national crisis the Englishmen forget their party differences. We cannot but admire the public spirit of the British people but it is doubtful that government without an effective opposition would be an unmixed blessing for the Empire.

In England the political parties have their respective organisations. Each party has its own leader whose view is followed

by the members. The Parliamentary organisation is vested in the whip whose chief function is to secure the maximum vote for his party in the House of Commons. Each party has a central office, and is assisted by an executive committee. In each electoral district there is a local organisation which is affiliated to the central organisation. Each Parliamentary constituency has party council which is entitled to send delegates to the party council of the county or borough. The delegates from the county or borough councils go to form the national party organisation. The organisation aims at increasing the members or supporters and is found to publish pamphlets for that purpose.

In the United States where the responsible form of government does not exist a highly organised party system has brought about harmony among the various organs of the government. Again, the frequent election of officials necessitates a strong organisation. Party organisation is also necessary for the administration of so large a territory as America on democratic lines. In U. S. A. political opinion was divided on the question of federation. Two parties—the Federalist and the Anti-federalist were formed. They disappeared from politics with the establishment of federation. Next came the Democrats and the Whigs who were divided on the question of the rights of the people. The Whigs were split up on the question of slavery and those holding the anti-slavery opinion were designated as the Republicans. The modern parties in U. S. A. differ more in form than in substance.

If we study the organisation of parties we will find that the National Convention is the head of the organisation. The Convention is composed of twice as many delegates from each State as the State has members of the Congress. The chief function of this convention is to make party nomination for the presidency and the vice-presidency. This National convention is recognised universally as the Party oracle and concentrates all its effort to assume control over the Executive and the Legislature. The System begins with the 'Primary' which is the meeting of the qualified voters in the smallest electoral area convened with a view to selecting members of the Local Committee, making nominations to local office and sending delegates to the next highest meeting, selecting candidates for the State offices and Senatorship without any intermediary convention and delegates to the party convention. The primaries are also asked during the Presidential election to make their preference for a particular candidate.

Too much organisation of parties has its evils and in the United States we find that party has degenerated into a machine by which the boss (the party leader) is in a position to promote his selfish interest. Offices are given to the supporters of the party. This system is known as the Spoils System in America. These party leaders are also found to take money from the business community and make laws which are favourable to them. This abuse of the party system is known as the Graft.

Another peculiarity of the American system is that the State laws regard the political parties as public political institutions and provide that the public shall be given notice of the time and place of primary elections and that the expenses of elections shall be paid by the State.

In the continent of Europe a multiple party system prevails. In France there are as many as eleven parties and the result is that none of them has majority. These include in order of importance (1) Radicaux Socialist, (2) Socialists, (3) Union Republicain democratique, (4) Republicaine de gauche, (5) Radicaux Independants, (6) Republicaine Socialistes, (7) Independants, (8) Democrates populaires, (9) Communistes, (10) Communistes Socialistes, (11) Conservateur. The party organisation is not strong enough to bring about union among the various parties. The result is that the French Cabinet which is formed by combination of some of these parties cannot command support of the majority for a long period of time. Again, a member of the outgoing ministry may secure a seat in the succeeding ministry. The party system or as it is commonly called the Group System is lacking in efficient organisation. The party organisation does not extend beyond the Chamber of Deputies and for that reason the French citizens do not owe allegiance to any particular party. Such being the case election campaign is carried on not by any local committee constituted strictly on party basis but by a number of men who want to return a particular candidate.

The parties with the exception of the extreme right and the extreme left do not differ from one another on principles and programme and their members may easily change their allegiance during the course of legislative session.

In Germany there were as many as eight parties represented in the Reichstag after the 1928 election. For a period of time Germany witnessed one-party rule under the leadership of Hitler. With the fall of Germany in the last Great War this Nazi party has lost its pre-eminence. In Italy Fascist party attained

the same position and refused the right to form any other party. In Russia the Bolsheviks occupy a pre-eminent position and have prevented the existence of any rival party.

Sec. 4(a). A comparison between the English and the American Party System.

Growth of party in England and U. S. A. In England the party system forms the basis of the present constitution and in fact the principle of Cabinet responsibility came into being as a result of the continued existence of dual party system in England. The party thus forms an integral part of the English national system and is thoroughly in harmony with the organisation of government. In the United States the party has grown up outside the constitutional system and secures indirectly a harmonious working of the governmental machinery.

Party Machine. In England the party-in-power wields the governmental power and if this policy of administration is not supported by any voter he is at liberty to support the opposite party. In the United States the party organisation is more elaborate and the unity of the party is more artificially maintained by leaving the actual operation of party organisation to the small group of politicians known as the 'machine'. The ordinary member has little or no voice and the result is that they take no interest in politics.

Spoil System. In the United States the constitution provides for the election of a large number of officials for a short time. This has led to the Spoils System by which responsible posts are offered as rewards for party services. This practice is unknown in English soils where the Cabinet is to appoint the executive and the judicial officials for a fairly longer period. In spite of the above differences there is one point of similarity which we cannot ignore. In both these countries parties have grown up as extra-legal organisations outside the machinery of the State and served as the motive force and unifying agency that make democracy workable over larger areas.

Sec. 4(b). Political Parties in India.

In India we witness the active existence of two main parties: The Congress Party and the Moslem League Party.

(i) *The Congress Party* :—This party represents the most powerful party in modern times. This party owes its present strength to the untiring energy

of Mahatma Gandhi whose policy of non-violent non-co-operation has the largest number of supporters.

It is the only political organisation which works on national lines and make no distinction between castes and creeds. It has a broad outlook and laid down liberal rules for membership and affiliation with the result that it now embraces within its fold all classes and communities in India. The immense popularity of this party is proved by its success in forming the new National government of the Indian Union. There is one subdivision which is known as the Forward Bloc framed at the instance of S. Subhas Chandra Bose with a view to checking the authoritarian tendency of the Congress.

(ii) *The Moslem League Party* :—The Moslem League has for its object the promotion of the Moslem interests. It demands separate electorate for the Mahomedans and The Moslem League party. lays greater stress upon the promotion of their communal interest than upon the national progress of the country as a whole. The Moslem League which is headed by Mr. Jinnah has assumed considerable strength and solidarity and set up a Central Parliamentary Board and several Provincial Boards with a view to consolidating its position. The efforts of the League have been crowned with success and a separate State of Pakistan has been established for the promotion of Muslim culture.

(iii) *The Hindu Mahasabha* :—This party has come into being in recent times. It exists with a view to safeguarding the legitimate interests of the Hindus against the conflicting interests of the Moslem League. In its attempt to realize this end this party, however, does not forget its ultimate object which consists in promoting the national progress of the country as a whole.

(iv) *Communist Party* :—The object of the party is to gain power for the working class. This party stands for the welfare of the working class and is ready to establish dictatorship of the Proletariat. This party looks for support and guidance from Russia.

(v) *Socialist Party* :—This party dropped from the Congress in 1947 when at the Kanpur Conference it declared its independent policy denying the absolute right of the State to plan production, the power to determine the conditions of work, prices and the distribution of the national produce. The State should exercise these powers jointly with the Trade Unions, Co-operative and other suitable representative bodies of the workers.

(vi) *Radical Democratic Party* :—Under the leadership of Mr. M. N. Roy this party wants to establish a Secular State on a Socialist basis.

(vii) *National Liberal Federation* :—This party is very moderate and is opposed to direct action of any sort. It is wedded to constitutional forms of agitation.

(viii) *Scheduled Caste Federation* :—Under the leadership of Dr. Ambedkar this party demands extraordinary privilege for the Scheduled Castes.

(ix) *Rashtriya Swayam Sevak Sangh* :—Started in 1930, this party advocates the necessity of military training of the Hindus and adopts measures for the promotion of the physical, intellectual and moral well-being of the Hindus and the establishment of Hindu Rastra.

(x) *Socialist Republican Party* :—Under the leadership of S. J. Sarat Chandra Bose this party stands for removal of corruption from the Governmental machinery.

Sec. 5. Merits of the Party System.

(i) The existence of political parties is necessary for the administration of States on a democratic basis. It is essential to democracy. Democracy implies that government should be carried on with reference to the will of the citizens and the party system gives a method by which people are in a position to express their opinion.

(ii) The party system is the best way of securing a working majority in the Legislature. In the absence of well-organised parties the Executive Department will fail to work smoothly and satisfactorily for want of support in the Legislature. It is necessary for legislative majority. The administrative machinery will be weak and unstable.

(iii) The party system serves as an effective check upon the arbitrary action of the party-in-power. The party-in-power is aware of the fact that the measure adopted by them will be severely criticised by their opponents and this prevents them from taking any measure which will be prejudicial to the interest of the people and destroy their confidence in the party. It controls the Executive.

(iv) The party system is the best method of bringing about harmony in the activities of the various organs of the government. In States where non-responsible form of government exists the utility of a well-organised party can never be exaggerated. It secures harmony.

(v) It stimulates the growth of public spirit. The leaders of the parties and their members are found to devote their energy and attention to the discussion of political questions.

(vi) The organisation of parties aims at increasing the number of supporters by publishing their views and by convening meetings where political questions are discussed. The citizens thus acquire knowledge in politics and begin to take increasing interest in question of political importance.

Sec. 6. Demerits of the Party System.

(i) In party system we find an artificial unanimity among the members of a particular party. The members are not allowed to express their individual opinion but have to yield to the opinion of the leader in order to maintain the solidarity of the party. In this way freedom of opinion and thought is discouraged. The party system also stimulates the factious spirit of the citizens.

(ii) The government by the party-in-power often leads to corruption. The responsible offices are held by those who contribute to the success of the party and efficient persons who belong to the opposite party are seldom allowed to render their services to the State.

(iii) Sometimes parties come into existence for the promotion of the interest of a particular section of the community. In almost all civilized States there is the Labour Party which aims at improving the condition of the labourers. When a party is in power it will sacrifice the interest of the State for the benefit of a particular section. Again, when parties are organised on social or religious difference they will fight with one another for the promotion of their communal interest to the detriment of the national interest.

(iv) The existence of numerous parties leads to constant change of ministry and hampers the progress of the State.

(v) Party Government sometimes creates a feeling of enmity and the members of the opposite party oppose even measures which are really conducive to the interest of the community. The spirit of hostility stands in the way of concentration of national energy and endangers the national safety of the State.

(vi) Each party has to make promises in order to attract supporters during election. Sometimes the party-in-power fails to keep these promises and thus cheats the electors. Again, when it fulfils its promises it sacrifices principle to the pledge.

(vii) In times of national crisis the government by parties leads to serious consequences. This is the reason why during war the coalition ministries are formed and the parties give up their difference and concentrate their energy for the safety of the State.

It causes mischief.

The Party System undermines the moral structure of society. The Party-in-power is sometimes found to support their activity by suppressing truth.

Questions and Answers

Q. 1. Is the party system essential to modern democracy ? What are the merits and demerits of the party system ?
(C. U. 1939).

Ans. See Secs. 1 and 3.

Q. 2. Compare and contrast the organisation and working of the Party System in England and the United States of America.
(Mad. 1935).

Ans. See Sec. 4(a).

Q. 3. Discuss the uses and abuses of the Party System.
(Pat. 1934; Nag. 1934).

Ans. See Secs. 5 and 6.

Q. 4. Examine carefully the merits and defects of the party Government. Is it possible to have a workable alternative to this in India ?
(C. U. 1944, 1948).

Ans. See Secs. 4(b), 5 and 6.

CHAPTER XV

THE ELECTORATE

Sec. 1. Theories of Suffrage.

It is the fundamental principle of democracy that administration is to be carried on in accordance with the will of the citizens.

The citizens must have voice in the affairs of the government.

Franchise is
Inherent
right.

Now the question is whether every person living within a State must have a right to voice his opinion. In indirect democracy where citizens must send their representatives, the question of election is very important. Different States have followed different theories of suffrage. In ancient France the theory of suffrage was intimately connected with the theory of sovereignty. Rousseau's theory was that sovereignty resided in the general will. Based upon this theory of sovereignty was the theory of suffrage which would regard right to vote as an inherent right of every citizen. The French writers emphasized the theory of suffrage. Notwithstanding the prevalence of this theory the French constitution did not introduce unrestricted and universal suffrage. This theory was also supported by the leaders of the revolutionary movement in Austria.

There is another school which states that right of franchise should be regarded rather as a public office or function conferred upon those who are able to bear the responsibility and discharge their functions wisely.

Sec. 1(a). The Problems of Franchise.

The right of franchise is the most important right which the citizens of modern States may claim. If democracy means government of the people and for the people, it follows as a corollary that all citizens should have a right to participate in the affairs of the State. This brings the question of suffrage into prominence. The State has to solve various problems in this connection.

In the first place only those who are intelligent enough to use their right properly should have franchise. *Secondly*, sex should be no criterion in determining the right of franchise. *Thirdly*, steps should be taken to prevent the corrupt practices which often compel persons to cast their votes in favour of candidates whom they really do not like. *Fourthly*, the interests of minority should be adequately protected.

Principles of
franchise.

Sec. 1(b). Qualifications of Electors.

Although there is in modern times a tendency for the extension of franchise yet in no State do we find that every citizen enjoys the right of franchise. The reason is obvious. The well-being of the State depends greatly upon the manner in which the citizens exercise their right of franchise. If this right is conferred upon irresponsible and worthless citizens serious consequences may follow. This is the reason why

Certain
qualifications
for franchise.

the States insist upon certain qualifications and exclude the disqualified persons from the electoral roll.

In almost all States persons who are minors and of unsound mind are deprived of this political privilege because these persons cannot exercise their right of franchise properly. The persons claiming suffrage must at least attain the age of legal majority.

Another important qualification which is often insisted upon is literacy. This is a good test inasmuch as literacy develops the mental faculty and helps greatly in the matter of judicious exercise of franchise. A knowledge of the three R's is not quite sufficient because it seldom ensures a sense of responsibility which every elector must possess.

Literary
qualifications.

In restriction of universal franchise John Stuart Mill contended that universal teaching must precede universal enfranchisement. But this condition will be too hard for the illiterate factory workers and leave their lot unimproved for ever. If on the other hand they are enfranchised as had been done in England by the Second Reform Act of 1867 they will have their cause adequately represented in the Legislature and their representatives will surely take every possible steps for the illiterate workers and for introducing a scheme of universal teaching.

Laski finds no alternative to universal adult suffrage and holds that education cannot be a basis for franchise in the absence of a technique whereby an educational qualification can be made synonymous with political fitness.

Residence within electoral district is another qualification which some States have been found to insist upon. This condition which is rigidly imposed by the Government of U. S. A. cannot but promote territorial interests at the cost of national interest. Again, this restrictive principle, as James Bryce tells us, compels the voters to choose candidates who are residents within the electoral area and thus leads to the return of men of inferior qualification. The member, again has to count upon the support of the constituency and cannot in apprehension of defeat in the next election voice his independent opinion.

Some States insist upon certain special qualifications such as the possession of certain amount of property and the payment of certain minimum taxes. The possession of property shows that the possessor has some stake within the State and is for that reason expected to exercise his right of franchise cautiously and intelligently. The payment of taxes proves in a measure the ability of the person who pays taxes and justifies his

Certain special
qualifications.

claim for suffrage. In India the property qualification is still insisted upon.

Why aliens are excluded. Aliens are generally excluded partly because they owe their allegiance to some other States whose interest might be in conflict with the interest of the State they live in and partly because they may not take active interest in public affairs.

Sec. 2. Universal suffrage, how far it has been introduced in modern States.

Suffrage is regarded as an inherent right. In modern democratic States there is a cry for universal suffrage. It is stated that every person is interested in the administration of the country and for this reason must have the privilege of sending representatives to the Legislature. Those who support universal franchise regard suffrage as an inherent right of every citizen. The supporters of universal suffrage ignore one important fact that every citizen is not equally interested in the administration. A man having no income is not interested in the policy which the government may adopt in assessing the incomes of people. Even if we assume that everyone is equally interested, everyone is not equally competent to understand what he is voting about. This necessitates certain restrictions and we find that some persons are not allowed to have the privilege of voting. Every modern State thinks twice before introducing universal suffrage because it wants to avoid the dangers of government by the poor and ignorant masses. In every State there are certain minimum qualifications which the citizens must possess before they are entitled to vote.

Property qualification. In the United Kingdom there is no single electoral law but there are many laws relating to suffrage. A person whose name has not been entered in the registration list is not entitled to vote. Under the Equal Franchise Act of 1928 any person whether male or female who is twenty-one years old and resides or occupies business premises of an annual value of not less than ten pounds for three months is entitled to have his or her name registered as voter in Parliamentary and Local Government election unless he or she is otherwise disqualified. The persons who do not enjoy the right of franchise include aliens, paupers, idiots, convicts, certain public officers and peers.

In the United States the electoral rules have been framed by the individual States. Some States insist on property qualifications while others demand educational qualification. In general, it may be said that the electorate is composed of persons, male or female who are over 21 years of age.

Universal manhood suffrage. In France the extension of franchise has almost brought universal manhood suffrage. The individuals excluded from suffrage consist of lunatics, bankrupts, convicts, persons under guardianship and those engaged in active military or naval service.

Franchise in Germany. In the New German constitution provision has been made for the franchise of all persons, male or female who have completed their 21st year. In India there has been considerable extension of franchise by the Government of India Act, 1935. Electoral roll is prepared in every constituency and contains names of persons who are qualified to vote. Individuals having the following disqualifications are not entitled to vote :—(i) not being a British subject or ruler of any Indian State, (2) being of unsound mind, (3) being under 21 years of age. In spite of this extension of franchise the Electorate is yet too small in comparison with the vast population and comprises only 27 per cent. of the adult population.

Franchise in India.

Sec. 2(a). Extension of Franchise : Why condemned.

The extension of franchise has been criticised on the following grounds :—First, it is contended that an extension of franchise often brings on the electoral roll many persons who are not qualified to exercise the right of franchise prudently. This argument applies with greater force in India where the people are mostly illiterate. There is some truth in this contention; but if franchise were to be given to persons of proved capacity, very few persons will have it. Again, it is also found that persons who are otherwise qualified have failed to exercise their right of franchise judiciously. Secondly, it is argued that as the labouring class is numerically strong everywhere extension of franchise is sure to throw the preponderance of voting power into the hands of this class. To give such powers to a class of persons who are least able to understand their responsibility is not always safe, but we can reasonably hope that even the leaders of this labouring class have a sense of responsibility and will not disregard the legitimate rights of other classes.

Undue predominance to unfit persons.

Benefits of extension. The extension of franchise has important advantages which more than outweigh the disadvantages mentioned above. It stimulates the interest of the people in public affairs and enables them to know their duties and responsibilities as citizens of the State. They are given an opportunity of discussing important matters and in this way their intelligence is developed. An extension of franchise is

no doubt desirable, but there must be proper safeguards because indiscriminate and unrestricted franchise may produce serious consequences.

Sec. 2(b). The Compulsory voting : How far justifiable.

The view that suffrage is an office or function has now a large number of supporters. Among well-known supporters of this theory we may mention John Stuart Mill, Lecky, Sir Henry Maine, Professor Sidgwick, Bluntschli and several others. All of them are unanimous in their assertion that franchise should be the privilege of those who are believed to be the most capable of exercising it for public good. Now the question is whether in the interest of the public good the citizens upon whom this privilege or office is conferred should be under a legal obligation to exercise it. There are writers who are in favour of attaching a legal obligation to this proud privilege of voting on the ground that it will be very difficult to determine the real will of the electorate if the voters are allowed the option of not participating in the choice of public officers. It is no doubt true that success of democracy depends upon the active participation of the citizens in the affairs of the Government. It is also true that even in modern times some States e.g., Belgium, Rumania, Spain, Argentine, the Netherlands, Czechoslovakia and some Swiss cantons have been forced by circumstances to adopt this system of compulsory voting with a view to promoting public interest in politics. Nevertheless, the system has been severely condemned by political writers on the ground that the right of franchise is a privilege which will lose much of its sanctity if a legal obligation is attached to it. Again, it will be against public policy to punish a citizen who has neglected his civic obligation. It is also contended that if the citizens are compelled to exercise their franchise they will often do it most reluctantly and without any regard to public good.

Sec. 3. Woman Franchise.

With the development of democratic form of government and the extension of franchise among the male citizens, the questions of franchise of women has acquired much prominence and deserves careful consideration. If franchise is an inherent right of every citizen there is no reason why women should be deprived of it. Among modern writers Jeremy Bentham, Professor Sidgwick, J. S. Mill, have strongly supported the political enfranchisement of women. The arguments that have been advanced in favour of woman franchise may be stated thus :—

Arguments
in favour of
woman franchise.

(1) The right of franchise must be given to every citizen who is qualified enough to make the best use of it. If women are otherwise qualified it is extremely unjust that they should be deprived of this privilege merely because they happen to be of female sex. Sex cannot be a rational criterion for determining franchise. (2) Women require protection of law more than men because they are physically weaker than men. They should have, therefore, a right to send their representatives who may protect them from unjust class legislation. (3) If consent of the governed is taken to be the fundamental principle of democracy there is no reason why women should have no voice in the administration. (4) The civil disabilities of women concerning the ownership of property have been removed. They have equal rights with men and can own property, enter into contract, and compete freely with men in all professions and occupations. It is desirable that this civil right should be followed by political enfranchisement. Again, women have occupied with success the throne of many civilised States and have shown their proficiency in other spheres of life. It is extremely unjust that they should be deprived of the privilege of franchise. (5) The political enfranchisement of women will introduce a purifying and ennobling element in public life and give a moral tone to it.

Several arguments have been advanced against the enfranchisement of women. First, it is argued that active participation of women in political affairs will tell upon their maternal instincts and they will neglect their household duties to the detriment of the health and strength of their children. Secondly, female suffrage will lead to quarrels among the family members. If a husband differs in his view from the wife there is a great chance of loss of domestic peace. Thirdly, if women always are guided by the opinion of their husbands, evidently there will be no loss of domestic happiness but the State will gain nothing by their vote as it will be merely a duplicate of the husbands'. Fourthly, women are physically inferior to men and cannot discharge the military duties of citizens. Lastly, in most States majority of women are not very anxious to participate in public life and they desire to remain engaged in family affairs. But this cannot be the reason why franchise should be denied to those who are qualified enough to exercise their franchise efficiently and demand it with all force they can command. All the above arguments are superficial and if we carefully consider them we will find that the weight of the argument is in favour of the political enfranchisement of women.

In England the right of women to vote in Parliamentary election was recognised for the first time by the Representation

of the Peoples Act 1918. In Germany women of 20 years of age were given by the Constitution of 1919 the full and equal suffrage with men in the Parliamentary elections. The constitution of the United States was also amended with a view to putting women on an equal footing with men in all national and political elections. The Russian Soviet constitution of 1918 enfranchised all women who attained their 18th year. The Indian constitution has recognised this valuable right of women by enfranchising the women who possess the minimum property or educational qualification or who are the wives of men who pay certain amount of taxes.

Sec. 4. Method of forming Electoral Areas.

In this section we will deal with the methods which are generally adopted for the election of representatives to the Legislature. One such method is to divide the State into a smaller number of districts from each of which several members are chosen. The size of the district determines the number of representatives which it will send. This method is known as the General Ticket System. This method however, cannot be profitably applied when the area of the State is sufficiently large because in such a case the electors may not have any idea about the qualifications of the candidates who belong to different parts of the State. Again, this system gives opportunity to a party having a bare majority to capture all the seats and does not secure representation of the minority. To avoid these difficulties the modern States have taken recourse to another important system which goes to divide the State into as many electoral districts as there are representatives to be chosen and to allow each elector to cast only one vote so as to return only one candidate. This system is known as the Single District System and has been adopted by Great Britain, France and United States of America. The other method viz., the General Ticket System is in force in the Commonwealth of Australia, Belgium, Denmark and in some other States.

The Single District System has certain merits which have gone a great way in increasing the number of its supporters. First, the method is very simple and can be conveniently applied in large States. Each electoral district has to send only one representative and each elector has got the simple duty of casting only one vote. Secondly, the area of each electoral district is sufficiently small and for this reason it is possible for the electors to know the candidates fully and to cast their votes in favour of that candidate who is expected to discharge his responsibility satisfactorily. Again, the representative thus chosen is in intimate

The Single District System:—its merits.

touch with the Electorate and can fight for the removal of their grievances. Laski prefers this system on this particular ground. Thirdly, this system is preferred because it helps greatly in the matter of representation of minorities. If the General Ticket System is adopted, members will be chosen from the State at large and it is quite possible that all the representatives will belong to the party which happens to be in power. In this way the minorities will go unrepresented. This difficulty of the General Ticket System was experienced in the United States when the representatives of the Congress were chosen from the States at large. The Act of 1842 removed this difficulty by introducing the Single District System. Nevertheless it is not true to say that the system secures adequate representation for minorities.

The disadvantages of the Single District System should not be ignored. One such disadvantage is that the electorate is to restrict their choice to the candidate within the district and the result is that often an inferior man is elected. In this way the State is deprived of the services of its able statesman. The representative thus chosen will often entertain a narrow idea of representing the particular interest of the district from which he is returned to the detriment of the general interest of the State at large. Another disadvantage of this system is that it requires a constant revision of areas because the representation is based on population which changes rapidly. Some times the party-in-power in the Legislature will construct the electoral areas in such a way as to give the majority party an opportunity to capture almost all the seats.

Disadvantages
of the method.

Sec. 4(a). Public Vs. Secret Voting.

The questions which we have to discuss in this section relates to the manner in which the citizens should cast their vote. Should they come to the polling station and express their choice openly before candidates? Or should they express their decision in secret?

The system of public voting has been defended by certain writers on the ground that it gives an opportunity to the more enlightened citizens to guide and instruct the common people in the matter of selection of better candidates. The duty of voting is a public duty and there is no reason why this duty should not be performed openly and under the eye and criticism of the public.

Defence of
public voting.

In recent times this system of voting has very few supporters. The right of franchise has to be exercised freely and independently.

It is useless to confer this solemn right on a man who has not wisdom of making his own choice. Every voter must be given the free scope for choosing his own representative. If he is to express his view openly he cannot possibly express his independent decision because he may by so expressing his decision incur the displeasure of many persons whom he does not like to displease. For this reason secret voting is now regarded as an essential condition to a free and independent suffrage. In all democratic elections a method of voting by ballot is prevalent. This method may be briefly stated thus :—

The voter whose name appears on the electoral roll is given a ballot paper containing the names and descriptions of candidates.

Each ballot paper has a number printed on the back and the counterfoil attached to the ballot paper has the same number printed on the face.

As soon as a voter enters the polling station to record his vote he is given by the polling officer a ballot paper of the above description marked on both sides with an official mark and is directed to enter the inner compartment and to mark a cross against the name or names (if he has more than one vote) of candidate or candidates for whom he intends to vote. When this has been done the voter is to fold the voting paper so as to conceal his vote and put the voting paper, so folded up, into the ballot box.

After the close of the poll the ballot box is sealed up and taken charge of by the returning officer whose duty is to count the votes in the presence of candidates or their agents and declare the result of the election.

Several arguments may be advanced in favour of this system of secret voting. First, it prevents intimidation and enables the voter to exercise his free will. Secondly, it discourages certain forms of corruption which have already crept into the polling station. Few persons will run the risk of spending money when they know that the voter may be dishonest and cast his vote secretly in favour of their rivals. Thirdly, this system makes distinctly for order on the polling day and for the purity of election.

Sec. 5. The Direct Vs. Indirect Election.

In democratic government the representatives are generally elected by the people. This election may be either direct or indirect. In direct election the electors themselves choose their representatives. It prevails in many modern States and has con-

tributed much to the development of political intelligence of the masses. The electors take active interest in public affairs because they know that they have power to select persons who will represent their cause in the Legislature. The representatives in their turn come into direct contact with persons whom they represent and have opportunity of knowing fully their grievances. With the extension of suffrage, difficulty is being felt in the matter of election of able representatives. To avoid this evil of universal suffrage indirect form of election has been adopted in many States.

In indirect election the electors choose an intermediate body of persons who in their turn choose the representatives. The principal arguments that can be urged in favour of indirect election are these : First, this form of election tends to check the evils of universal suffrage. The intermediate body of persons who are selected by the masses are generally men of superior intellect and are therefore expected to choose the ablest men as representatives. In this way the State will be in a position to get services of the ablest statesmen. Secondly, it intends to place the ultimate authority in the hands of those who would be less influenced by the gust of popular or party passion. The system of indirect election has, however, been associated with certain evils. In States where party system is highly developed, this method of election cannot avoid the influence of the party because the intermediate body will consist of members of that party.

Another objection is that it makes the electors apathetic. The electors know that they are to choose not the representatives but only men who will ultimately choose their representatives. For this reason they do not take any interest in election. The intermediate electors whose assistance is requisitioned for a temporary period may not discharge their functions with all seriousness because their office is temporary in character and they may be easily bribed for choosing the candidates of a particular party. For this evil of indirect election many modern States have preferred the method of direct election to the method of indirect election.

Sec. 5(a). Instructed Vs. Uninstructed Representation.

Once the representatives have been elected there comes another question of serious importance. The question is how the representatives should act. Should they act in accordance with the instructions given by the persons whom they represent or should they

How should the representative act.

have an individuality of their own? There is difference of opinion among the writers of political science regarding the question. Some are of opinion that a representative must be a mere mouthpiece of those whom he represents and should have no other function but to register their will. If he fails to do this, the electorate should remove him from his office.

The writers who express the above opinion urge for an instructed representation and will not allow a representative to disobey the directions of the party which returns him. They argue that a representative is an agent of the constituency and does not represent the nation as a whole. They, however, do not fully understand the difficulty that stands in the way of such an instructed representation. They ask the representative to register the will of the people but do not show the way to the ascertainment of such a will. Indeed we often speak of public opinion but is public opinion always the calm judgment of intelligent masses? Certainly it is not. Thus we find that the representatives will scarcely find real instructions of their constituents concerning every proposed legislation.

Another objection to the instructed representation is that even if instruction is available it will not be available as promptly as necessary. Promptness is as much necessary as deliberate action; if at every step the representative is to consult the opinion of his constituents, the legislative activity of the State will suffer a great deal.

Again, a representative is generally a man of superior intelligence and his judgment will have higher value than that of his constituents.

Another important objection that is raised against instructed representation is that under such a system the State will be deprived of the services of its ablest statesmen. No able man will come forward to render his services to the State when he has to sacrifice his own independence and act as a mere commissioner to register the mandates of his constituency.

One more objection against instructed representation is that the representative in the Central Legislature has to take into consideration the general interest and not the particular interest of his constituents. If a representative is to follow the instructions of his constituents—instructions which their selfish interest will prompt them to give—he will surely fail to discharge his duty of safeguarding the general interest of the State. Considering all the above objections we may safely

conclude that the system of instructed representation cannot bring permanent benefit to the State. It is desirable that a representative should be given freedom of action and the fixity of the term of the life of the Legislature will be the best guarantee that the representative will not betray his constituents and act in a manner which is prejudicial to their interest. This is indeed the modern conception of the function of a representative. He is not bound by the instruction of his constituency nor compelled to answer to them for his conduct. He should weigh the sentiments of his constituency and give effect to them only in so far they are not inconsistent with his best judgment and sense of duty to the nation. Virtually all modern constitutions allow a representative to enjoy his freedom of judgment. According to the current view he is not at liberty to do whatever his better judgment may dictate him. He has got to sacrifice his intelligence and conscience to the altar of the Party which returns him and has to mould his decisions in the light of party policy. Laski says that a delegate who has thus to receive his instruction from a party council cannot but lose his morals and personality.

Sec. 6. The Qualifications of Representatives.

Every State insists upon a minimum qualification which the representatives must possess before they can aspire to become representatives. The qualifications are :—

(1) A representative should be a citizen of the State. The aliens are excluded because they owe their allegiance to a foreign State and have no permanent stake in the State in which they happen to live for a temporary period of time.

(2) Some States insist upon residence within an electoral district as a necessary qualification. In the United States there is constitutional convention to the effect that a representative must be a resident of the district which he represents. In the United Kingdom, however, residence in the district is not required and non-residents who are otherwise qualified can be representatives.

(3) All States require the attainment of certain minimum age. The reason is that the representatives must be old enough to understand the complicated problems of legislation. Great Britain requires the age of twenty-one while other States require a higher age limit.

(4) Some States insist upon property qualifications. The reason why ownership of property is regarded a necessary quali-

fication is that a man owning property is expected to possess certain qualities which make him fit for discharging the responsibility attached to the office of a representative. As against property qualification it has been argued that property is not the sure test of intelligence and legislative fitness. If the State insists upon this qualification, it has great chance of being deprived of the services of the ablest statesmen who do not possess any property.

(5) According to Laski a representative should be required to serve a local body at least for three years in order to qualify himself for a seat in the National Assembly. Such a qualification or a qualification of a similar nature will go a great way in equipping the Legislature with men who have experience in the political sphere.

Some States are found to exclude certain persons from the Legislature. Followers of certain religions have been excluded. In Great Britain ministers of the established churches and the clergy of Roman Catholic Church are not allowed to seek election.

Certain officers are excluded. In the United States where the theory of separation of powers holds good, the members of the Executive cannot have seat in the Legislature. In Great Britain the permanent officials cannot become members of the Legislature.

Sec. 7. Duration of the Office of Representatives.

In order that the responsibility of the representatives to their electorate may be enforced, it is necessary that the tenure of their office should not be perpetual. If the representatives are allowed to hold their office till their death, there is a great chance that they will not even care to act in accordance with the will of those whom they represent. They have no fear of losing their seats and will not hesitate to take measures which are prejudicial to the interest of the State. Thus they will become representatives only in name. On the other hand the term of their office should not be too short. True it is that opinion of the people changes, but does it change so quickly as to necessitate annual election? Formerly the idea was where annual election ends tyranny begins and in some of the constitutions of American States we find provision for annual election. But difficulties of annual election cannot be exaggerated. First, one year is too short a period to allow the representatives to understand fully the grievances of the electorate and to take measures for their removal. Secondly,

there will be enormous loss of time and energy because the short term of office does not give the representatives opportunity to pass those bills which they introduced with a view to doing good to the country. Thirdly, 'the frequency of elections has a tendency to create agitation and excitement in public mind, nourish factions, encourage restlessness, favour rash innovations in domestic legislation and public policy and produce violent and sudden changes in the administration of public affairs founded upon temporary excitement and prejudices'. For the above reasons the modern States do not favour annual election and have made the tenure of the office of representatives sufficiently long to ensure their responsibility to the Electorate. The practice of States differs widely. In Great Britain the maximum length of tenures is five years for the House of Commons and three years in case of other local bodies. In India the length of the tenure is five years for the Council of State, and three years for the Legislative Assembly and other provincial councils.

The question that now arises is whether during the fixed term the Legislature should remain irremovable. If we answer the question in the affirmative, the Legislature will take advantage of the privilege to make the Executive its tool and to proceed in its own way. This attitude of the Legislature does not make for a wholesome relation between the Executive and the Legislature. As the Executive is responsible to the Legislature and can remain in office so long as it commands the confidence of the latter, it is highly desirable that the Executive will be given the right to cut short the otherwise fixed term of the Legislature by means of dissolution. This right of dissolution when exercised with adequate safeguards by the Executive will give rise to a spirit of inter-dependence and indicate the ultimate authority of the Electorate.

Sec. 7(a). Should A Representative receive any Salary?

Once a representative has been duly elected, it is his duty to take active part in framing the laws of the State and devote much of his time and energy to studying the legislative needs of his country. Now the question is whether these immense services which a representative has to render should be remunerated by the payment of certain amount of compensation. There are critics who strongly condemn the practice of paying any remuneration to the members of the Legislature and urge that services should be gratuitous. John Stuart Mill apprehended that the payment of remuneration to a member would attract only incompetent men and the ablest men who would regard service in the Legislature as a public duty would scarcely come forward to lend their

Difficulties
of annual
election.

John Stuart
Mill's view.

services for a petty remuneration. Again, the system was defective inasmuch as it would give Politics the character of a gainful profession. The system was also condemned because the payment of salaries or compensation to the numerous members of the Legislature would impose additional burden on the public treasury and would lead to additional taxation.

In spite of the above objections the system of payment of certain allowances to the representatives has received almost universal support. The aristocratic element is fast disappearing and the Legislature is now composed mainly of the representatives of the Labour and Social parties who have no means to render gratuitous services to the State. In Great Britain at the instance of the Labour party the Parliament passed in the year 1911 a resolution providing that the members of the House of Commons other than those who receive salary as minister or other officer should receive a salary of £400 per year: this practice of paying allowances and salaries to the members of the Legislature prevails in almost all modern States of Europe. In the United States the position of the members is more favourable in this respect and they receive in addition to the high allowances certain sum known as mileage to cover their travelling expenses to and from the meeting place of the Legislature. In India the members of the Legislature are given certain salaries and allowances for their services.

Sec. 8. Representation of Minorities: System of Proportional Representation.

True democracy means "government of the whole people by the whole people equally represented". But the present system of representation where the candidates securing a majority of votes are returned does not provide for the representation of those who happen to support an unsuccessful candidate. If in a constituency there are 1000 voters of whom 501 support one candidate and 499 voters support another, the candidate securing 501 votes is returned while 499 voters remain unrepresented. In this way the candidates who are returned will represent only the majority of the Electorate and the minorities will have none to support their cause in the Legislature. The result is that certain section of the Electorate will rule over the rest. This is contrary to the principle of democracy which professes equality as its foundation. John Stuart Mill condemned in strong terms this rule by a bare majority and urged that in a really equal democracy every section of the community should be represented not disproportionately but proportionately. This brings us to the question of

The need for granting allowances.

Arguments against proportional representation

The defects of the method of election.

proportional representation which means representation in proportion to the voting strength of each section. Several arguments have been advanced in favour of such a system of representation:—First, it will do away with the evils of District System which often gives the party-in-power an opportunity to divide the electoral districts in such a manner as to secure for itself almost all the seats in the Legislature. The minority party will have its representatives in proportion to its numerical strength and the party members who secure the largest number of votes will be returned. Thus the best and the ablest men from each party will come to render their services to the State. Secondly, since the number of seats to which a party is entitled depends upon its voting strength there will be no room for bribery and corrupt practices which characterise the election campaigns of these days. Thirdly, even the smallest parties will be given certain number of seats in the Legislature and this will enable the party to gain in power by gradually increasing the number of supporters.

The system of proportional representation has been condemned by political writers on more than one ground. In the first place it takes away the natural inducement which the District

Arguments
against propor-
tional represen-
tation.

System gives for the more instructed part of the community to bring under control the less instructed and thereby to protect the country against demagoguery. In the second place the system sets up one party against other, provokes class war and encourages pernicious class legislation. Thirdly, the representatives carry with them the mandate of the party they represent and this tends to reduce the standard of efficiency in the Legislature. Fourthly, the representatives of numerous parties which such a system will secure will hamper the smooth and effective working of cabinet form of government by making it difficult for the party-in-power to retain a workable majority for a sufficiently long period of time and to work out a heavy programme. The expansion of electoral area will destroy the intimate relation between the member and his constituents, strengthen party organisation and require a more effective wire-pulling. Fifthly, the devices which have been suggested for securing proportional representation are complicated and can scarcely be understood by the masses whose right of franchise has now been recognised by modern States. Sixthly, the member who is practically returned by the party will only work out the party programme and will not care a fig for the real grievances of people. Seventhly, the system will scarcely ensure the presence of independent persons in the Legislature because each party will invariably choose persons who can be made to follow the party routine. Eighthly, the List System which purports to secure proportional representation strengthens the solidarity of the more-powerful

party and checks the growth of minor parties. In this way it ultimately gives rise to dictatorship which cannot tolerate the existence of more than one party.

Sec. 8(a). The Various schemes for Proportional and Minority Representation.

The dis-enfranchisement of minorities produces serious consequences and several schemes have been suggested to secure their representation. Some of these schemes aim at securing for each party or group representation in proportion to its voting strength while others press for some representation of the minorities but not necessarily proportionate to their numerical strength.

(1) *The Hare System* :—The schemes most commonly associated with proportional representation are the Hare scheme and the Andræ scheme. The former owes its origin to Thomas Hare and the latter has been named after the Danish minister Carl Andræ; the Hare scheme has been supported by John Stuart Mill and several other writers. The scheme which is also designated as Preferential system or Transferable Vote system may be described thus:—The candidates stand on general ticket and are returned as soon as they secure the electoral quota which is found out by dividing the total number of votes cast by the number of seats vacant. In the Andræ scheme the quota is obtained by dividing the number of ballot papers by the number of seats vacant. The electors are instructed to cast their votes indicating their first choice, second choice and so on. The first choices are counted first. If a candidate is fortunate enough to secure sufficient number of first choices to make up the electoral quota, he is returned and his surplus votes are given to the other candidates in the order of preference. Even when the transfer of such surplus votes cannot enable the transferee to attain the quota, the candidates securing the lowest number of votes are compelled to withdraw and their votes are transferred to more fortunate candidates in order of preference. This scheme which does not divide the State into single electoral districts secures representation of the minorities because it enables the minority groups to combine and elect representatives of their own. The system avoids the waste of votes because it makes provision for the transfer of votes from the candidate who does not require them to one who requires the same to complete his quota. It also secures representation according to number of every considerable minority in the constituency. The electors again have to consider the qualifications of candidates. But the system is too complex to be of any practical utility particularly when it is applied to large districts. In other respects the

The system is too complex.

Mill's view.

system has great value. John Stuart Mill places it among the very greatest improvements ever achieved. The system is in vogue in Germany, France, Holand and has been used for certain constituencies in India.

(2) *The List System* :—According to this system each party has to give a list of candidates. The election then takes place and each voter is allowed to cast as many votes as there are seats vacant but he must give his vote to the whole list en bloc. The electoral quota is determined by dividing the total number of votes by the number of seats and by adding one to the quotient. The number of representatives to which a particular party is entitled is determined by dividing the votes cast in favour of the candidates of that party by the electoral quotient. The deficiency is supplied by the party having the largest fractional quotas. The system has been adopted by Norway, Sweden, Switzerland, Belgium and Denmark.

The system has the advantage of securing proportional representation with special reference to the existing parties. It is more simple than the Hare Scheme. The system however gives no opportunity to the voter to choose any particular candidate.

(3) *The Limited Vote System* :—Another method which has sometimes been adopted for the representation of minorities is the Limited Vote System. This consists in allowing the voters to cast smaller number of votes than there are seats. In this way some seats are reserved for the representation of minorities. If there are two parties, the minority party is given by the system some representatives to protect their interest. The system has been criticised on the following grounds :—(a) it cannot secure proportional representation ; (b) it is unsuitable when there are many parties ; (c) it cannot be applied to districts where only one candidate is to be elected. The system is in vogue in Italy, Spain, Portugal and Brazil.

(4) *The Cumulative Vote System* :—This system attempts to secure representation of minorities by allowing the elector to cast all his votes in favour of a particular candidate or candidates. If a constituency is to return three candidates, each elector will have three votes which can be given to a particular candidate. In this way the minority party is given a chance of getting some representatives by cumulating the votes of its members on the party candidate. The method is defective because (a) it cannot secure proportional representation, (b) it involves a waste of votes and (c) it gives birth to sectarian ill-feeling and strife.

(5) *The Second Ballot System* :—Another system which secures just election and which for that reason prevailed in pre-war British elections is the Second Ballot. In a Second ballot. constituency where more than two candidates contest, the candidate returned may happen to secure only a relative majority but the two other candidates may have between them more votes than the successful candidates. Thus we see that the representative in such election represents only a minority of voters. To avoid this difficulty the system of Second Ballot is adopted. The candidate who stands last in election is asked to drop out of election and the contest takes place between the two other candidates so that the persons who voted for the out-going candidate may redistribute their votes between the two candidates. In this second election the candidate who secures a majority of vote is elected. This system is in vogue in Australia.

Sec. 9. Representation of interests : Territorial Vs. Functional Representation.

The representation of various interests of the State is consistent with the spirit of democracy and has been highly spoken of by Mirabeau and other ancient writers. M. Duguit says "all the great forces ought to be represented—industry, property, commerce, manufacturing, professions, etc."

The reason for the representation of various interests is obvious. The Legislature has often to make laws touching these interests and it is quite natural that these interests should have adequate representation to safeguard their cause. In Soviet Russia and Italy the vocational basis of representation has been adopted. The Government of India Act, 1935, has also recognised the principle of representation of at least the major interests of the country.

This problem has received careful consideration in the writings of G. D. H. Cole who has applied the principle of Functional Democracy in the organisation of political society in the same way as the said principle has been adopted by the Guild Socialists in the organisation of industries. It is argued that it is impossible for one man within a given territory to represent fully any other man within the same territory and therefore a representative institution based on the principle of territorial representation becomes nothing more than a misrepresentative institution. Any kind of representation which really represents must be functional representation ; modern territorial representation should therefore be replaced by a system of functional representation which will allow the various interests within the State to send adequate number of representatives to the Legislature. The reason underlying the latter scheme is that people belonging to the same

economic group will have more in common than persons living in the same electoral territory. Again, the modern Legislature is often faced with issues which vitally concern the different economic interests. It is also urged that functional representation will do away with the evils of majority rule which is the offspring of the system of territorial representation.

The critics of this doctrine urged that the interest of each group is not always antagonistic to that of another group. Again there are matters of legislation which equally affect the various interests within the State. Thus no group can have any objection as to the manner in which the Legislature enacts laws regarding maintenance of peace and order and the improvement of sanitary condition. Groups are also interrelated and are often found to lend their united support to governmental measures.

The principle is false and often leads to quarrel, confusion and breach of peace. Again, this form of representation will go
 Arguments to lower the character of the Legislature
 against because it will be composed of men who will
 representation look not to the general interest but to the parti-
 of interests. cular interests of particular classes or sections
 they represent. The Legislative Assembly in which all the various interests of the country are represented must lose its efficiency and degenerate into a debating society where each member will fight for the cause of the interest he represents. One more difficulty will arise in connection with the division of population into a large number of groups and the organisation of the Electorate upon the basis of artificial distinctions.

Hence we cannot but agree with Laski when he says "The territorial assembly built upon universal suffrage is the best method of making the final decisions in the conflict of wills within the community." The various interests within the State will receive adequate protection if such an assembly is made to consult the organised wills of the community before it acts upon them. Every interest should have its own organisation to bring before the Legislature the felt needs and suggest plans for satisfaction.

Sec. 10. The Plural Voting : the Weighted Voting.

In modern times there is a cry for universal suffrage and suffrage has been regarded as the inherent right of every citizen.

True it is that each citizen should have some
 Everyone is voice in the election of persons who will legislate
 not equally for the whole State; but is it desirable that every
 efficient. citizen should have equal voice? Are all citizens
 equally efficient in choosing the best candidates who are expected to do good to the State. The answer is in the negative. To avoid the evils of universal suffrage certain States have conferred upon

the more qualified persons the right of having more than one vote. This is what is known as the system of plural voting or weighted voting. According to this system a citizen having certain amount of property or having university qualification is allowed to have a supplementary vote over and above the ordinary vote. Again, a citizen having properties in different constituencies is allowed to record his votes in all constituencies. In Belgium this system was introduced as early as 1893 and was strongly supported by John Stuart Mill. In England this system prevails and authorises the abler citizens to cast two votes under certain conditions. In India the Government of India Act, 1935 allows the graduate voters and the voters of the landlords' constituency to exercise a special second vote.

The system of weighted voting enables the intelligent and the capable citizens to control the ignorant and uninstructed mass who will in the absence of such a system command an overwhelming majority in the Legislature. In the words of John Stuart Mill it is 'counterpoise to the numerical weight of the least educated.'

The chief defect of this system lies in the difficulty of getting a just and practicable standard of weighing the votes. Sometimes, University graduates are given extra votes while highly qualified men engaged in other spheres of human activity are deprived of this privilege. Again, academic training may not always be accompanied with political capacity which may be possessed by an uneducated artisan. Similarly, possession of property may not be the best criterion by which the weight of votes may be determined because possession of property may be the result of an accident of birth and weighted voting for the wealthy may result in class government. The system has also been attacked on the ground that it is inconsistent with democracy, brings in corruption in administration and is the most archaic and unjust system of suffrage in the world.

Sec. 11. Essentials of a Good Electoral System.

The electoral system should be as simple as possible. The voters are mostly illiterate and they will scarcely be able to exercise their franchise properly when the steps in the process of election are complicated and cannot be easily understood by them. Another important element is to guarantee the freedom of opinion. The voters should be given opportunity to cast their votes in favour of candidates whom they prefer and there should be no room for intimidation and undue influence. This can be secured easily by the adoption of a system of secret voting. Again,

Constant touch
between the
voters and
the represen-
tatives.

Freedom of
opinion.

a good electoral system should provide for the representation of various interests such as education, commerce, etc. The traders and businessmen should have their own representatives in the Legislature to safe-guard their interests. Rules should also be framed for filling up vacancies caused by the death or resignation of a particular member.

Laski emphasizes the following four general considerations which an electoral system should satisfy :—

(i) It must confine popular selection to predominant groups based on a pure majority principle and reject the principle of proportional representation which goes to make the government weak and unstable.

(ii) The electoral areas or districts should be small enough to promote an intimate touch between the representative and his constituents.

(iii) There must be means for checking the results of a general election with reference to change of outlook among voters. This can be secured by adopting the English model of bye-election.

(iv) The system must aim at promoting a direct relation between the voters and the government of the day so that the latter can feel that the voters really constitute the source of their power and may when occasion arises scrutinize their activities, and remove them from their proud position.

Sec. 12. Minority problem in India : Communal representation and Separate electorate.

In India the problem of minority has been very acute in modern times. The minorities here are organised on neither national nor political lines and scarcely admit of scientific classification. There we find different communities with varying tradition, culture and economic interest ; on closer analysis the minority problem ultimately appears to be the Hindu-Muslim problem. If this problem can be solved it will not be difficult to meet the demand of other minor groups.

The representation of minorities may be possible in either of the two ways viz., (1) Joint electorate with reservation of seats for the minority communities and (2) Separate electorate for every particular community. The former method is preferable inasmuch as it attempts to bring into contact all the different communities. The latter method represents an extreme form of minority representation in which different communities are registered on separate rolls and vote in separate constituencies returning their own members directly to the Legislature. The questions of communal representation and of special electorate

have evoked serious discussions in India and deserve earlier solution.

The idea of separate electorate for the Moslems came from the brain of Aga Khan who emphasized the urgency of the matter in his interview with Lord Minto in 1906. The demand found encouragement in spite of the opposition of other communities and the Indian Councils Act of 1909 made provision for separate electorate for the Moslems. The Montague-Chelmsford Report condemned in serious term the idea of separate electorate but did not venture to abolish it until conditions of the country improved. The Statutory Commission deplored that the spirit of tolerance which lies at the root of majority rule was still unknown and recommended safeguards for minority interest. In the Round Table Conference the various communities pressed for separate representation but no agreement could be arrived at as to the number of seats to be given to each community in the Legislature and as to the method of representation. Next came the famous Communal Award of 1932 which made provision for separate representation of the general male, general female, Moslem male, and Moslem female, Europeans, Anglo-Indian male, Anglo-Indian female, Indian Christian male, Indian Christian female, Sikhs male, Sikhs female, Landholders, Depressed classes, Labour, Universities, Commerce-Industry-Mining-Planting, Backward areas. The award also introduced weightage with a view to favouring certain communities with a number of seats not warranted by their numerical strength. The provisions were incorporated in the Government of India Act, 1935 with the modification in the light of Poona Pact which abolished separate electorate for the Depressed classes but gave them out of the general seats a greater number of seats than what was specified in the Award.

In the new constitution of Indian Dominion we find provisions for the reservation of seats in the House of the People for the Muslim Community and the Scheduled Castes, the Scheduled Tribes in every state, the Indian Christian Community in the States of Madras and Bombay and for the nomination of not more than two members of the Anglo-Indian Community when such community has not been adequately represented in the House of the People. Similar reservation should be made for representation of the Muslim community, Scheduled Castes and Tribes in the Legislative Assembly of every State and for the representation of the Indian Christian Community in the Legislative Assemblies of the States of Madras and Bombay.

Sec. 13. The Arguments in Favour of Communal Representation.

(1) The system of representation on communal basis secures the representation of minorities in proportion to their

number. The minority communities get themselves represented in the Legislature and their interests are adequately protected.

(2) Each section of the people is given an opportunity to participate in public affairs and to get training in politics.

(3) The minority communities are not exempted from payment of taxes. "No taxation without representation" being the recognised principle, no State can refuse their claim for representation.

(4) When every section of the people has been represented, the State can easily know the opinions of these different sections on a particular question of public importance and can regulate its policy accordingly.

(5) The system makes for equal distribution of lucrative public offices among different sections and enables the depressed classes to secure higher status in life.

Sec. 14. Arguments Against Communal Representation.

(1) This system of representation engenders the spirit of hostility by setting up one class against another, one community against another.

(2) Each community sends its representatives with instruction to promote its selfish interest and the result is that the general well-being of the people which every State must attempt to promote, is ignored. The communal representation thus retards the growth of national life.

(3) The seats are to be distributed among different communities and this deprives the State of the services of many able statesmen who belong to a community which has got only limited seats.

(4) The apprehension that majority community will ignore the legitimate rights and privileges of a minority community is not well-founded. On the other hand the majority community has, as experience tells us, always protected the interests of the minority community.

If India, as she stands today, cannot do without communal representation, the ruling authorities will do well if they care to adjust the electoral circles so as to secure for every community its legitimate share in the Legislature. A system of proportional representation of the type which has been suggested by Mr. Hare may conveniently be introduced in India and is preferable to the system of communal representation by means of separate electorate which entails disruption of national unity and retards national progress.

Questions and Answers

Q. 1. What should be the proper relation between the representative and his constituency in a democratic State? Should he be bound by the instruction of his constituents? (C. U. 1934).

Ans. See Sec. 5(a).

Q. 2. What arguments of political theory would you use in supporting or rejecting communal representation? (C. U. 1931).

Ans. See Secs. 12, 13 and 14.

Q. 3. Write notes on (i) Communal representation, (ii) Proportional representation, (iii) Indirect election. (C. U. 1936).

Ans. See Secs. 12, 8(a) and 5.

Q. 4. Is 'adult universal suffrage necessary for 'free government'? Give reasons for your answer. (Mad. 1929).

Ans. See Secs. 2 and 2(a).

Q. 5. Discuss the question of representation of minorities in the various legislatures of India. (C. U. 1942).

Ans. See Sec. 12.

Q. 6. Discuss the problem of representation of minorities. How in your opinion can the problem of minorities be settled in India. (C. U. 1944).

Ans. See Secs. 8, 12 and 14.

Q. 7. State the case in favour of indirect system of election and give your own opinion. (Punj. 1936).

Ans. See Sec. 5.

Q. 8. Do you advocate universal franchise? What in your opinion should be the qualifications for the exercise of franchise. (Punj. 1942).

Ans. See Secs. 2, 2(a).

CHAPTER XVI

THE LEGISLATURE

Sec. 1. Importance of Legislature: its functions.

Legislature is one of the organs of the government and it is an important organ inasmuch as laws must be framed before people can be governed in a systematic manner.

Function of the Legislature. The function of the Legislature is to make laws which the citizens must obey to ensure their liberty. This legislative function consists of two parts viz., (a) deliberative and (b) actual framing of the laws.

The members of the Legislature must take into consideration all the possible effects of the law which they intend to pass and when they have made up their mind they should frame the law in a clear language so that the citizens can easily understand what the law means. When this has been done, the Judiciary applies the laws to a particular case and the Executive gives effect to the law by punishing its infringement. These relations of the Legislature, the Executive and the Judiciary have been compared to the major, minor premises and conclusion of a syllogism. Let us have a concrete illustration—All persons who commit theft should be imprisoned (major premise). Jadu has committed theft (minor premise); Jadu should be imprisoned (conclusion). In a state we find that it is the function of the Legislature to lay down what punishment theft deserves. It passes the law as stated in the major premise. It is then the business of the Judiciary to determine whether Jadu has committed theft and while pronouncing its judgment against Jadu, it states that Jadu has committed theft and must therefore be punished in a manner indicated in the judgment. Next comes the Executive which inflicts punishment upon Jadu and thus the whole matter is at an end.

Besides the purely legislative functions the Legislature of a modern State is found to exercise certain control over the other departments by regulating their activities. In almost all States it has control over the expenditure of public money and regulates the relation of the State with other States. The Legislature has also to determine the manner in which revenue has to be raised. It also takes part in amending the constitution and in determining the validity of electoral returns. In some States it elects the President or the Chief Executive Head and serves as a Court of trial when high officers are removable by impeachment. Except in autocratic States where law happens to be the command of a particular dictator the supremacy of the Legislature remains unchallenged and its sphere of activity has been extended enormously with the extension of State functions. The growing complexity of modern government has necessitated substantial delegation of purely legislative powers to the Executive. In some States Referendum and Initiative have been introduced in order to curb the power of the Legislature and to ensure direct participation of people in matters of legislation.

Sec. 2. Organisation of the Legislature : Unicameral and Bicameral legislatures.

Legislation affects everyone within the State and must be made with due care and caution. The legislators should think twice before making any new law and see that it does not interfere with the safety and well-being of any particular section of the community. To ensure representation of every interest care

should be taken to see that minorities do not go unrepresented. At the same time it is to be seen that the legislative body does not become too big for the peaceful discharge of its business. To maintain the moderate size of the Legislature the big States have been increasing the size of the constituencies so much so that in U. S. A. a constituency now covers an area of 6958 square miles and contains 282241 voters. Too big a constituency is to be avoided at any cost because it hampers the peaceful election of candidate and stands in the way of maintenance of that intimate relation between the representative and his constituents the value of which cannot be lost sight of in a representative government. Hastiness in legislation is also to be avoided. This brings us to the question of Bicameral organisation which makes room for two chambers and every bill must pass through both chambers before it can become law. This form of organisation has been introduced in almost all modern States. In England we find the House of Lords and House of Commons. All civilised States are now convinced that a Bicameral Legislature is better than Unicameral Legislature which consists of only one chamber.

Merits of the
Bicameral
system.

The Indian Union shall have a Parliament consisting of two Houses to be known respectively as the Council of States and the House of the People.

Sec. 2(a). Merits and Demerits of the Bicameral Legislature.

The merits of this form of organisation may be summarised thus : The Bicameral system prevents hasty legislation. There are two chambers and a bill has to be considered carefully in each of these chambers. The existence of a Second Chamber will destroy the evil effects of a sudden and strong excitement, and give opportunities for reflection and deliberation. (2) A Second Chamber saves the State from the despotism of a single chamber where passions, caprice and party intrigue play the predominant part. The existence of a second chamber is therefore a guarantee of liberty and to some extent a safeguard against tyranny. (3) The Bicameral system gives scope for the representation of special classes of interests in the State and introduces generally a conservative force to check the radicalism of the lower chamber. With the extension of suffrage the Lower House has come to represent the proletariat merely and the upper classes remain unrepresented contrary to the true principle of democracy. These upper classes may be represented in the Upper House and in this manner the interest of every section is protected. (4) Another advantage of the Bicameral system is that it affords opportunity for selection of efficient statesmen who may not seek election but whose services are nevertheless necessary for the well-being of the citizens.

(5) The two chambers will check each other and thus augment the power of the Executive. (6) Finally, a second chamber gives opportunity for the representation of States which compose a federal union and thus maintains a proper equilibrium between the component parts. All these arguments are convincing and we find that many modern States have been associated with a Bicameral Legislature.

The critics of the Bicameral system argue that it leads to quarrels and discords and sometime causes unnecessary delay in the passing of laws. The second chamber is also expensive. It is either superfluous or obnoxious. It is superfluous if it agrees with the lower chamber. Again, it has been argued that the existence of two chambers is inconsistent with the principle of the unity of the sovereign will. Laski finds no reason for the creation of a second chamber. He is of opinion that a single chamber if properly constituted will be sufficiently competent to determine the will of the Electorate and will be made to conform to such will by the inertia of the masses. No second chamber is needed to guide the single chamber or to revise its resolutions. He also fails to find out any satisfactory method for the creation of second chamber and argues that creation of a second chamber will mean only additional safeguards for the vested interest.

Bicameral organisation, says Gentle, is but a provisional step and will continue so long as different sections hold different views on a matter of common concern. With the development of political institutions people will gradually be conscious of the unity of interest and as soon as this consciousness has been attained there will be no necessity for a second chamber.

Sec. 2(b). The Unicameral Legislature :—its merits and demerits.

The Unicameral system which makes for only one chamber in the Legislature has been supported mainly on the ground that it will secure unity of organisation and will facilitate the passing of laws by avoiding the discord and dissension between the two Houses. A Unicameral Legislature will make the legislative machine less costly and the money that is now spent in paying the salaries of the members of the Upper House and in defraying the incidental cost of a separate establishment will be saved.

Among modern writers Laski makes out a strong case for a single chamber Legislative Assembly by emphasizing the difficulties in the way of constituting a second chamber and the defects inherent in the second chamber as constituted in modern States. He also dispenses with the necessity of a second chamber in a federal type of government where such chamber is often set up for afford-

Criticism of
the Bicameral
system.

Laski's view.

ing special protection to the units of federation against the danger of being overweighed by more populous units. According to Laski the growth of party system has made infructuous this attempt to maintain, through the medium of an equally represented second chamber, the equality of status among component States. Again, once federation has been complete, a sense of nationalism springs up and the representatives of every component State, inspired as they are by this sense of nationalism, must in the long run forget their sectional or State interest. If any protection is at all required, it can be best secured by the terms of the original distribution of powers embodied in the constitution and by the right of judicial review by the courts. Laski also undermines the necessity of any provision for revision and delay because every important piece of legislation is the outcome of long process of discussion and analysis. The above argument of Laski is now gaining ground and many modern States are now convinced of the efficiency of a single-chamber Legislature. The new States—Yugoslavia, Finland, Latvia and Esthonia—which came into being after the last Great War have adopted with success the Unicameral system. The system has also been introduced in Bulgaria, Rumania, Greece and in the Cantons of Switzerland.

The demerits of the Unicameral system are the merits of the Bicameral system referred to in the previous section.

Sec. 2(c). Justification for Second Chambers in the Indian Provinces.

Under the Government of India Act, 1935 we find that some of the Indian Provinces—Bengal, Bihar, Assam, the United provinces, Madras and Bombay have been associated with upper legislative chambers known as the Legislative Councils in addition to the lower chambers. The object of this innovation is to secure for the provinces concerned the advantages of a Bicameral Legislature. To achieve this object franchise in the case of upper chamber has been based on higher property or service qualifications. Again, to ensure the existence of trained legislators the councils have been given perpetual existence and the lives of membership have been lengthened. In some provinces—Bengal and Bihar—an attempt has been made to secure harmony between the two chambers by giving the Lower Houses concerned the power to elect a number of members to the Upper Houses. There is one more reason for the constitution of the Second chambers. The dominant interest viz., Government interest remains unrepresented in the popular lower chamber and the new constitution provides for the representation of the Government by

Second chambers in certain provinces.

authorising the Provincial Governor to fill up a number of seats in the Second chamber by nomination.

Sec. 3. The Constitution of two Houses.

The two houses should not be identical in organisation. The Upper House should require higher qualification in its members and should enjoy longer tenure and represent the various interests of the State. When these requirements have been satisfied the upper chambers will surely consist of members who are experienced and able to control the whims and caprices of the Lower House which should generally represent the mass of the population. In every State where Bicameral system has been introduced the constitutions of the two chambers rest on dissimilar basis. Regarding the constitution of the Lower House we find that the principle of direct election finds almost universal acceptance. The States however differ in the method of constituting the second chamber. It is very difficult to point out the best method of constituting the upper chamber. The method of direct popular election will go to make the Upper House a mere duplication of the Lower House and lead to the general lowering of the house which should consist of eminent statesmen. The alternative method of indirect election which prevails in France is the usual method and can claim immunity from the defects inherent in direct popular election. This method however throws heavy responsibility on the electoral college which finally elects the members of the Upper House. Election by the local Legislature is another method which once found favour in the United States but was ultimately abandoned because it encouraged bribery and brought about frequent deadlocks between the two houses. Mr. Lees Smith proposes a second chamber constituted and elected by the Lower chamber and entrusted with the function of revising and postponing legislative measures passed by the Lower House. Such a body cannot but represent the party that is in power in the Lower House and being a pale ghost of the Lower House will fail to serve any useful purpose. Another form of indirect election, as suggested by Mr. Graham Wallas goes to build the Second chamber on trades and professions ; but it is a very difficult task to constitute a second chamber on this line so as to present in adequate proportion the various trades and professions within the States. Again, it is doubtful whether a man who has specialised in a particular Art will have sufficient ability to tackle successfully the various knotty problems which concern the State. Besides these methods there are two other methods. . The method which supports the hereditary principle is distinctly hostile to democratic ideas, allows a small class within the State to have special control over its policy

The constitution of the Legislature in different countries.

and has for these reasons already been discarded by all European States except Great Britain. The method of appointment by the Executive which prevails in Italy and Canada has been condemned on the ground that the appointment would often be made as reward for party service and the upper chamber so constituted would neither enjoy nor attract the confidence of the governed. No one method can ensure the efficiency of the Upper House. Perhaps the ideal method lies in a combination of almost all the above methods.

Not only should the two Houses be composed differently but they should enjoy different powers. These powers depend on the nature of the constitution of the Houses. If each House is composed of representatives chosen by direct election there will be very little difference between their powers. Generally, the lower

Power of the
two houses.

house is more democratic in form and has greater control over legislation. In Great Britain the House of Lords enjoys no power in financial legislation. The Upper House is less popular and acts generally as a revising and criticizing body having some voice in administration of foreign affairs. Again, it is not desirable that each chamber should have identical powers. An equality of power will necessarily lead to frequent deadlocks and paralyse the Legislature. To prevent this the modern tendency is to increase the power of the lower or popular chamber and to allow the second chamber to have only a suspensive veto. In England bills passed by the House of Commons three times within two years become laws despite the adverse veto of the House of Lords.

Sec. 4. Modern method of Direct legislation.

In modern democratic States the laws are made by the representatives of the people. These representatives do not always discharge their legislative functions with reference to the real interest of the citizens. Once they have been returned they are free to pass any law they like.

To remove these evils certain methods have been suggested which ensure the responsibility of the Electorate in legislative measures.

These methods provide for direct interference of the Electorate in legislation and generally take three forms viz., (1) Initiative, (2) Referendum and (3) The Plebiscite. The

Initiative.

Initiative means a system under which a certain number of voters may propose a bill and compel the legislatures to consider it and then to re-submit it to the popular vote. The system is in vogue in Switzerland, Germany, Esthonia and in some of the American States. The second method (Referendum) consists in referring a particular bill which has

Referendum.

already been passed by the Legislature to the

people for their approval. The object of this method is to consult the will of the people regarding the law which the Legislature is to pass. This Referendum, again, may be either compulsory or optional. The constitution of Switzerland insists upon compulsory referendum in the case of amendment or revision of the constitution while there is optional referendum in respect of statutes passed by the Federal Assembly. The third method

(The Plebiscite) provides for the submission of certain questions to popular vote with a view to eliciting public opinion on them and regulating the policy of the Government accordingly.

There is one more method. This is Recall which enables the electors to remove the undesirable members before the expiry of the terms. This prevails in the western American States. Another novel device has been introduced in New England where voters meet in a town meeting, elect town-officers and decide matters of local importance.

These systems of direct participation of the people in legislative functions have the following advantages :—(1) Laws are

Arguments
for direct
legislation.

made in accordance with the opinion of those for whom they are meant. In this way political sovereignty of the people becomes a reality,

(2) The system of Referendum sharpens the interest of the citizens in public affairs because legislative measures are referred to the citizens and their opinions are consulted. (3) It checks corruption in legislation by securing a careful consideration of all legislative measures. (4) The influence of political parties is destroyed and sectional legislations become rare when each individual has to exercise his own intelligence in considering every particular proposal that is referred to him. The system of Referendum is the most effective way of preventing deadlocks which occur when the two chambers differ in the matter of legislation. (5) The system of initiative has one more advantage. It can compel the Legislature to pass such bills which are considered necessary for the safety and tranquillity of the citizens. (6) The system of Recall enables the Electorate to have sufficient control over the representatives and checks the predominance of the party.

Several arguments have been advanced against the above systems of direct legislation. First, the representatives are generally more qualified than the mass of the electors

Arguments
against direct
legislation.

and for this reason it is better to leave the legislative function absolutely to them. Secondly, the representatives will lose much of their responsibility when they have to refer every matter to the Electorate for their approval. Thirdly, meritorious persons will seldom be candidates for election when they know that they are mere

delegates of their electors. Fourthly, the influence of parties and the party legislation will not diminish because parties are better organised than the Electorate and the Electorate is more likely to be influenced by the party than the members of the Legislature. Fifthly, it is useless to refer complicated problems of legislation to the illiterate masses. It is mainly on this ground that Referendum and Initiative cannot be successfully introduced in India. Seventhly, the process of legislation will involve a huge waste of time and society will suffer a great deal for belated appearance of legal measures.

Laski observes that Referendum and Initiative have not made any special contribution to the solution of the problem of the country where they have been introduced. This is because there are very few problems which are susceptible to popular decision by mass-voting. If any check on the power of the Legislature is sought for, it will, in the opinion of Laski, be found in the method of limited recall to be resorted to by the Electorate in the last resort.

Sec. 4(a). The Indirect control of Electorate over the Legislature : Legislation and public opinion.

In this section we are concerned with the indirect methods by which the Electorate is found to influence legislation. First, the representatives have to seek election and the citizens are at liberty to choose their representatives on the distinct understanding that the latter would protect their cause. Secondly, the representatives do not enjoy permanent seats and have to seek re-election on the expiry of their term. This fact goes to ensure the responsibility of the representatives to the Electorate and makes for a more co-ordinate relation between the members of the Legislature and the Electorate.

Thirdly, the Electorate is found to influence the Legislature by public opinion which finds expression through the press and the platform. When the public opinion is against the passing of the bill, it is the duty of the Legislature to drop the same.

Fourthly, the Electorate may organise political parties and may thus acquire an efficient control over the Legislature. Fifthly, there is the system of Recall by which a certain number of voters may demand a popular vote on the question of removal of certain elected officials.

Sixthly, the Electorate may also conveniently form propaganda association and pass resolutions concerning matters of legislation. Seventhly, special interests of producers and consumers can be safeguarded, if they form respective association and are very keen for the promotion of their welfare.

Sec. 4(b). Process of Legislation.

In all States legislation must conform to certain prescribed procedure before it can find a place in the statute book. It must manifest itself in the form of a bill introduced formally by a member of the Legislature. Then the bill is to be published for eliciting public opinion and sent to one or other of the several committees where the bill is put to searching criticism, free discussion and open debate. Modifications are suggested by way of amendment and such amendments are put to vote before they are finally accepted. The bill along with the proposed and accepted amendments is embodied in the report of the committee and placed before the House from which it originated. The power and function of the committee are not the same in every State. In some States which follow the British model the power of the committee is strictly restricted and cannot go beyond the general scope of the bill and introduce new matters which change the character of the bill. In U.S.A. the power of the committee is wide enough to introduce any kind of amendment and to put an altogether new bill in place of the bill referred to it.

Every legislative body maintains a set of rules for the peaceful and orderly conduct of business. The members must abide by these rules and there must be a President to enforce strict observance of these rules. The Speaker's part. President of the Lower House which is found to take a leading part in legislation by reason of its democratic constitution, is known as the Speaker. The Speaker occupies a position of great esteem and responsibility.

In modern Legislature in which free and open debate is allowed there must be some devices for closing debate otherwise discussion on a particular bill will continue for days together to the great detriment of other important business of the House. One such device is to move what is called the previous questions and this motion when carried automatically puts an end to a debate. Another device is to prevent discussion of a bill or any particular clause thereof by passing a resolution known as the guillotine or closure by compartment.

To effect substantial economy in the valuable time of the House the legislative process has been simplified in modern time by dispensing with the old custom of reading aloud the whole of a bill and by introducing modern methods of voting. Function of the House has also been restricted to enunciation of broad principles of human conduct leaving the details to the administration. This will necessarily involve a delegation of legislative power to the

executive but unless such delegation is made the modern legislation will scarcely achieve its objects.

Sec. 5. The Purpose of the Legislature : How to best achieve this purpose : The ideal relation between the Legislature and the Executive.

In modern State with the increasing complexity of its legislative business the purpose of the Legislature has been restricted to formulation of general rules of conduct. Now the question is how the Legislature can fulfil this purpose in the best way possible. The best method is that which goes to organise the Legislature on a coherent plan and make for an intimate relation or inter-relation between the Executive and the Legislature. In the absence of such relationship the Legislature will, as experiences in America make us believe, be lacking in initiative in legislation and a deadly inertia will settle over it. This sort of hostile relation can scarcely help in the realisation of the object of the State and must stifle the organs through which the State has to achieve its ends.

Another type of relationship gives, as in France, the Legislature the power of dominating the Executive. This happens when the Executive fails by reason of numerous party organisations to assume an effective leadership over legislative business. The legislative business falls absolutely on the shoulders of the Legislature and the latter is deprived of that willing co-operation of the Executive in the initiation of legislative programme which is essential to successful legislation.

What then should be the ideal relation which should subsist between the Legislature and the Executive in order that the former can fulfil its purpose ? Laski finds in the British system a model upon which relationship between the Legislature and the Executive can be built with success provided attempts are made to overcome the defects inherent in the British system. The Executive should be given complete responsibility for finance and the Legislature will be entitled to reject only the methods by which the revenue is to be raised. The Executive should have the right to control the time table of the Legislature but at the same time they should give ample opportunity to the private member to make his contribution. Attempt should also be made to create and develop an organic connection between the Executive and the Legislature by associating with each department a committee of experts chosen from the members of the Legislature with power to advise, to encourage and to warn the minister without affecting his independence in the matter of

the making of policy. Again, the procedure in committee stage of a bill should be remodelled so as to ensure the presence of the minister and his permanent officials and their participation in the debate with a view to arriving at a peaceful settlement.

Questions and Answers

Q. 1. Do Upper Chambers serve any useful purpose ? (C. U. 1933).

Ans. See Sec. 2.

Q. 2. Write explanatory notes on the Initiative and Referendum. (C. U. 1936).

Ans. See Sec. 4.

Q. 3. What are the advantages for the Bicameral system of Legislature ? How far are they real ? Should Bengal have a Second Chamber in the new constitution of India ? Give reasons for your answer. (C. U. 1935).

Ans. See Sec. 2.

Q. 4. Have the arguments usually urged in favour of Bicameral system of Legislature any real value ? (C. U. 1938).

Do you think that there was any justification for creating a Second chamber in some of the Indian Provinces ?

Ans. See Secs. 2 and 2(a).

Q. 5. Examine the relation between legislation and public opinion. (C. U. 1939).

Ans. See Sec. 4(a).

Q. 6. Discuss the merits and demerits of a Bicameral system of Legislature. Is an Upper House essential for India ? (Bom. 1931).

Ans. See Secs. 2(a) and 2(c).

Q. 7. Describe the working and utility of Referendum and Initiative. What do you mean by Recall ? (Patna 1944 ; Madras 1936).

Ans. See Sec. 4.

Q. 8. Critically examine the advantages and disadvantages of a Second Chamber. (C. U. 1943).

Ans. See Sec. 2(a).

CHAPTER XVII

THE EXECUTIVE

Sec. 1. The Meaning of the Executive: Its province of activity.

The term 'Executive' means that branch of the government which is concerned with execution of the will of the people. The laws of the State represent in democratic countries the will of the people and the executive department must exist to give effect to this law in accordance with the decision of the Judiciary.

The widest sense of the term.

In the widest sense, however, the Executive includes not only the executive officers but also the judges because they are concerned with the application of laws. In a restricted sense it includes all the officers—superior and subordinate—who are engaged in carrying out the will of the people as formulated in laws. In the narrowest sense the Executive implies only the supreme authority which has control over the subordinate officials without whose assistance the executive functions of the State cannot be discharged efficiently.

The power of the Executive Head is not the same everywhere. In some States there is the real Executive while in others there is only a nominal or titular Executive. In the latter case the Executive has no real power but the administration of the State is carried on in his name. In the United Kingdom the Crown seldom participates in the actual administration of the country. The real Executive is the Cabinet which is responsible to the Legislature but for certain political advantages the name of the Crown is closely associated with the administration of the State.

Real and titular Executive.

Now what is the true province of the Executive. Is its scope exhausted by a mere application of the law enacted by the Legislature? To answer the question in the affirmative is to give an incomplete account of the province of the Executive. The Executive in modern States has been entrusted with much wider power and what is more important in this connection is its power to make rules and regulations in the exercise of an authority delegated by the Legislature. The Executive has also been entrusted with work which properly belongs to the province of the Judiciary and a finality has sometimes been attached to its decision for the sake of administrative convenience. This extension of the functions of the Executive has been necessitated by the growing complexity of State activity. The State has now to perform with the help of its executive department various functions which include primary functions like maintenance of peace and order and many secondary

functions like construction of railways, roads, bridges, maintenance of schools, museums, hospitals, regulation of currency, credit and prices. Laski rightly apprehends that an unrestricted expansion may prove a menace to individual liberty and proposes certain restrictions on the exercise of the legislative and judicial powers of the Executive. In the first place the Legislature should be competent to revoke its delegated authority of legislation when the Executive is found to abuse such power. Secondly, the courts should be competent to define this power and to declare that a rule or regulation framed by the Executive is *ultra vires*. Thirdly, the rules framed by the Executive must obtain the approval of an appropriate committee of the Legislature attached to the Executive or in the absence of such approval must be ratified by the Legislature. Fourthly, there must be adequate arrangement for publicity. Fifthly, no finality should be attached to the executive decision and the latter must be open to review by a competent court, and lastly, the State should permit itself to be sued for whenever its officials act *ultra vires*.

Sec. 2. Constitution of the Executive.

We have already seen that the Executive of the State is an important department and safety of the citizens depends greatly upon the proper constitution and organisation of the Executive. There are three methods of choosing the Executive:—

- First, the hereditary principle;
- Second, election ;
- Third, appointment or nomination.

(A) The first method which prevails generally in the monarchical States of Europe is not consistent with the spirit of democracy but nevertheless it is supported because it has a long historical tradition behind it. The hereditary principle has, as experience shows, introduced elements of stability, permanence and continuity and has created respect for authority and law. Again, it lends a certain prestige which greatly influences the relation of the State with other foreign powers. In times of emergency a hereditary executive can easily secure the co-operation of all the forces and make the best use of them for the benefit of the State.

The hereditary Executive has been subject to criticism on the following grounds:—(1) The principle of heredity does not always secure the best man who can be safely entrusted with the responsibility of the executive head. (2) The hereditary head has sometimes been found to use his legal powers in a manner which is detrimental to the safety and tranquillity of those who are

Advantages of
the system.

Defects of
hereditary
Executive.

governed. It is not compatible with the spirit of democracy which is gaining ground rapidly.

It should be noted in this connection that with the spread of democracy the hereditary Executive has become nominal and not real. This is the case in Great Britain where the Crown is the nominal head; the real head is the Cabinet.

(B) The second method of choosing the Executive is election. This again may be of three types:—election by the people, (2) in-

Election by
the people
directly or
indirectly.

direct election and (3) election by the Legislature.

In small States where people can assemble in a particular place direct election of the Executive by the people is possible. In Brazil, Peru and Bolivia the system of direct election is in vogue.

In U. S. A., the President is in practice elected by direct method, although the constitution makes provisions for an indirect mode. This method is supported on the ground that the citizens will have greater confidence in the Executive Head in whose election they have directly participated.

The main objections against this method are:—(1) The people are not competent to judge the executive capacity of a candidate and will generally be guided by party intrigues in choosing a candidate who cannot be entrusted with the responsibility attached to his office. Again, this system of election often leads to violence and corruption.

Objections to
popular
election.

(2) The method of indirect election has been prescribed by the constitution of the United States of America. The president

Merits and
demerits of
indirect
election.

is to be elected by an electoral college which is composed of the representatives of the States. This method of indirect election is in vogue in Mexico, Chile and in many other States. This system is preferred because it avoids all the evils

of direct election and leaves the task of choosing the Executive to a few persons who know fully well the capacities that are required in the Executive. But the development of political parties has taken away the freedom of choosing the best candidates. The intermediate electors whose function is to choose the Executive are generally elected under party pledges and they cannot for that reason independently vote for a meritorious candidate who does not belong to their party.

(3) Election by the Legislature is another kind of indirect election which has been adopted by France, Switzerland and a few other States. The object underlying this system of election is to secure members of the Executive who will act in co-operation with the Legislature. The selection of executive officers by the Legislature is also likely to be more wisely made.

The system has been criticised on the following grounds:—
First, it is not consistent with the principle of separation of governmental powers inasmuch as it makes the Executive a mere agent or instrument of the Legislature. *Secondly*, it creates a powerful temptation to an ambitious candidate to secure a majority of votes by holding out promises of official reward. *Finally*, the imposition of this important duty on the Legislature takes away much of its valuable time and hampers greatly the legislative activity of the State.

In Great Britain the Prime Minister, though in theory, he is formally appointed by the Crown, is virtually elected by the party-in-power in the House of Commons:

(C) *Appointment*:—The system of appointment of executive officers is mainly applicable to subordinate officers of the State. In dependencies of Great Britain the executive heads are appointed by the Crown. The system of appointment can claim one important advantage in this respect that before any appointment is made the qualifications of the candidates are taken into account.

Sec. 2(a). The Principle of Executive Organisation. How to organise it on efficient lines?

We have seen the different ways in which the Chief Executive Head may be placed at the helm of the whole department. The question that now arises is how this Chief Executive Head will proceed to deal successfully with the affairs placed under his care. The method which he will adopt depends greatly upon the nature of relation which such Executive Head will come to have with the Legislature. If the Executive Head is, as in the United States of America, independent of the Legislature, he will necessarily appoint a number of subordinate officers who will act according to his dictates and remain responsible to him alone for the discharge of their duties. If on the other hand, the Executive Head is responsible to the Legislature and can remain in office so long as he can command the confidence of the latter, he will evidently choose his colleagues who will be responsible to the Legislature for their actions and agree with him in the execution of the policy of administration. This form of organisation which prevails in Great Britain is more democratic and commands greater support. Serious attempt should be made to improve upon this model in the lines suggested by Laski in his *Grammar of Politics*. Laski lays down five clear principles upon which executive organisation should stand:—(i) responsibility to the Legislature, (ii) adequate financial supervision, (iii) organised relationship with the Legislature through expert committees of the latter, (iv) inter-departmental co-operation and (v) special provision for research and enquiry.

How to
organise the
Executive.

The executive power depends greatly upon the nature of organisation. The following ingredients go to add to the strength of the Executive : (i) unity, (ii) duration, (iii) adequate provision for maintenance, (iv) wide range of powers.

If unity of action is of primary importance, it is urgently necessary to entrust the executive powers to a single head. This Executive Head may be allowed to choose his colleagues with due recognition to the claim of outstanding personalities in the Legislature and to act in consultation with them.

These colleagues in their turn will act as departmental heads and be answerable to the Chief Executive Head. To ensure responsibility of the Executive to the Legislature and to promote unity of organisation it is therefore highly desirable to place each department under the charge of a minister who will be held responsible for the department. This responsibility to the Legislature is insisted on in almost every democratic State because it checks the tyranny of the Executive. Secondly, the Executive must be given a sufficiently long life to give full effect to its policy. If the life is too short, the Executive will fail to work out its programme. To make its tenure dependent on the support of the Legislature may yield satisfactory results only when the party-in-power commands an effective majority in the Legislature. Thirdly, there must be adequate fund for financing the programme of the Executive. Lastly, the Executive must be given a wide range of powers and sufficient discretion. Again, no coherent system of administration can go on unless each department of Executive develops an organic relation with the Legislature through the medium of an expert committee of the Legislature and at the same time promotes the growth of inter-departmental co-operation. There should also be adequate provision for financial supervision. To secure this each department should maintain an officer who will be responsible for all expenses of the department.

Responsibility to the Legislature. Another factor which goes a great way in improving the organisation of the Executive is adequate provision for research and enquiry. Each department should contain officials whose main business is to research into its problems. Again, there should be a sincere attempt on the part of the Executive to bring the public into organised relation with it through advisory committees similar to those now attached to the Board of Education in England.

Sufficiently long tenure. These committees will merely tender their advice to the administration and will neither direct nor control it. Such an organised relationship can be easily developed if the administration becomes decentralised in character and works

Adequate fund.

Research.

Advisory committee.

out its programme through local agencies of the type which have grown round the Board of Education in England. Another important question relating to the organisation of the Executive is the appointment of a number of permanent officials who will aid the political executive in the discharge of onerous responsibility. The permanent officials must not be appointed by the minister because if they are so appointed there will be a great chance of favouritism and important posts will be filled up by persons who lent support to the party-in-power during election. The best method will be to recruit these officers on the result of an open competitive examination held under the control of a Public Service Commission.

Sec. 3. Duration of the Office of the Executive.

When the executive officers have been elected, the next question that arises is the period of time during which they should hold their offices. The different States have fixed different periods which range from one year to seven years. The one year time prevails in some of the New England States while in France the executive tenure is seven years.

If the executive officers are given a short tenure, the citizens enjoy security against the abuses of power by an irresponsible and inefficient executive; conversely, a longer tenure often gives a selfish and insincere Executive enough opportunity to satisfy his own personal ambition to the detriment of the interest of the citizens. On the other hand a shorter tenure affects the stability of administration and continuity of an executive policy. If the tenure is very short, the executive will necessarily be weak, timid and lacking in initiative and independence. Again, the Executive will surely take no interest in the administration unless they are sure of re-election. Another serious defect of short tenure is that there will be frequency of election which will create disturbances in administration and often lead to political corruption.

Disadvantages
of shorter
tenure.

Another question which deserves consideration in this connection is the re-eligibility of the members. The constitutions of States generally restrict the right of the Chief Executive Head to seek re-election. Even where the constitution is silent on the point, traditions and customs strictly limit the right of the executive to seek re-election. Thus in the United States although the constitution does not lay down any rule restricting the number of times for which the President may seek re-election, the conventions of the constitution have limited the number to two. This convention has been disregarded in recent times.

Defects of the
system of
re-election.

The re-election of the members of the Executive is not favoured on the ground that when there is no bar to re-election the Executive Head will try to have resort to corrupt intrigues and promote the interest of those upon whose support his success in the next election depends. If on the other hand the Executive is not capable of seeking re-election he will not hesitate in the least to adopt a vigorous policy which will be conducive to the welfare of all the citizens.

Argument for
re-election.

Re-eligibility, however, has important advantages. It makes the Executive responsible to the citizens and secure the continuance of an efficient government, specially when the term of office is very short. Again, restriction of re-election will often prompt the Executive Head to promote his selfish interest as much as he can during the fixed term of his office. Furthermore, a rule against re-eligibility would compel the wise and efficient officer, to resign at a time when by virtue of his experience he is in a position to serve the State more efficiently. Finally, every executive officer will in the latter part of his tenure cease to take an active interest in the affairs of government and the administration will drift along without a plan or policy.

Sec. 4. Plural Vs. Single Executive.

The final control of the executive department may lie either in a single person or in a body of persons. In the former case there is the single executive while in the latter case the executive is plural. History furnishes us with instances of plural executive. In Switzerland there is at present a Federal council which consists of seven persons; but the principle of single executive is followed inasmuch as each member is in charge of a particular department. The plural executive is to be distinguished from subdivision or delegation of powers. A single executive head may require the services of certain subordinate officials but this does not change the nature of the Executive. Similarly, the Executive may sometimes be associated with an advisory council which as in the United Kingdom and France, exercises considerable control over the Executive Head.

Plural execu-
tive.

The single executive has the advantage of the unity of action and promptness in decision. There is no chance of difference of opinion and no time is wasted in taking proper measures. Again, there is no division of responsibility which is detrimental to the strength of the Executive. The single executive can also observe a secrecy of procedure which is sometimes urgently necessary for the safety of the State. The plural executive has the

Advantages
of a single
executive.

Advantages of plural executive. following advantages—First, it checks the arbitrary exercise of powers by the single executive and secures the liberties of the citizens. Secondly, a body of persons is likely to possess higher degree of ability and wisdom than can be found in any single person. Thirdly, the vesting of the supreme executive power in a single person is incompatible with the principle of democracy. The plural executive is proverbially weak and lacks force, energy, unity of purpose and independence.

Sec. 5. Classification of Executive Functions.

The functions of the Executive may be subdivided into various departments of which the following five are important :—
(1) Home, (2) Foreign, (3) Military, (4) Legislative and (5) Judicial.

(1) The Home Department. is concerned with the internal administration of the State. The chief duty of the Executive in this connection is to provide for the maintenance of peace and order by enforcing obedience to the laws. The internal administration also includes administration of the nation-building departments such as education, sanitation and irrigation. There are also departments of Finance, Commerce and a few other departments of great importance.

(2) The Foreign Department. is concerned with the administration of foreign affairs which requires a high degree of intelligence and tactfulness. The chief functions of this department are to make treaties and agreements with foreign nations and to appoint and receive diplomatic representatives.

(3) The control of the army and navy is vested in the Executive because quickness of decision and promptness in action are absolutely necessary in these departments. In time of war the Executive exercises the supreme power.

(4) The Executive in some States has been given certain emergency powers of making laws with a view to maintaining law and order. Again, the Executive has in almost all States the right of summoning, adjourning and dissolving the Legislature. Some times, the Executive has the right of initiating legislative measures and vetoing bills which have passed through the Legislature.

(5) Judicial functions of the Executive include the right to pardon which is often exercised by the Executive and the right to appoint judges and other judicial officials.

**Sec. 5(a). How to formulate the Policy of administration:
The Cabinet Principle.**

The policy of administration has to be determined with the approval of the Legislature and the various departments must give effect to this policy. To secure this the Executive must, in pursuance of the cabinet principle, be placed under the control of the accredited leader of the party. This leader should be made the Prime minister and on him should devolve the responsibility of choosing his colleagues. The Prime minister, again, should make his choice with due recognition of the claims of outstanding personalities who are ready to co-operate with him in finding out coherent policy of administration. The colleagues chosen should be sufficiently numerous to manage the various departments but not too large to cultivate a sense of collective responsibility for the entire policy of administration and to promote co-ordination of policy.

The Prime minister and the colleagues chosen by him will go to form the Cabinet. They will stand or fall together and will be charged with collective responsibility for the policy they uphold. To secure unity of purpose it is highly desirable that the Prime minister will have some pre-eminence over his colleagues and the latter should be by convention bound to abide by the decision of the former. The Prime minister, therefore, has to lend his mind to every department. Such being the case he should be concerned with the general policy of administration and must not be overburdened with the details of any department.

**Sec. 5(b). What are the general principles underlying the
Exercise of executive functions.**

The administration, if it is to be effective and successful, must stand on scientific basis and follow certain general principles roughly analogous to those followed by an able businessman in the management of a business. In the first place there should be division of governmental functions in the lines referred to in the previous section. The Head of the Executive should be possessed of foresight so as to make provision for all future possibilities in the planning of an efficient administration. The principle of foresight may thus be called the fundamental principle of administration. The next important principle is that of organisation which consists in setting up the machinery of administration and supplying the same with proper work for execution. It is nothing more than creation of organs to the plan. The third principle is the principle of command. The whole framework of administration will collapse if there is none to guide and control it. Without a commander the organs will not know what to do. Command is

necessary in order to make the governmental organs active and useful. The fourth principle is that of co-ordination. Every organ must be made to work in complete harmony with the other organs with a view to realising the administrative purpose for which they have been created. Next comes the principle of control which consists in seeing whether the desired result has followed and what improvement is needed in the above four principles for the more satisfactory administration of executive functions.

Sec. 6. The Relation of the Executive to the Legislature and the Judiciary.

Although in every state there are three important departments, each having certain distinct functions to perform, there is a close connection between the Executive on the one hand, and the Legislature and Judiciary on the other. The Executive has been given in many States the power of summoning the Legislature and of opening, adjourning and proroguing its sessions. In the responsible form of government the Executive has also the power of dissolving the Legislature. Again, the Executive is in a position to know the legislative needs of the State and for that reason it generally participates in the initiation of legislative measures. The close relation between the Executive and the Legislature is substantiated by the right of veto, absolute, qualified or suspensive which is vested in the Executive.

By the exercise of this right of veto the Executive can control the faulty, hasty and ill-considered legislations and compel the Legislature to pass such laws which will earn the approval of the Executive and be consistent with its policy of administration.

The relation between the Executive and the Legislature is more intimate in the cabinet system of government where the Executive is responsible to the Legislature for acts done by it and is to hold its office so long as it can command a majority in the Legislature.

In modern times the Executive has come to exercise overwhelming power. Sometimes this preponderance of power has been the result of delegation by the Legislature which finds itself over-burdened with work and empowers the Executive to supplement the laws by rules and regulations. Again, the socialistic tendency of modern governments has gone a great way in extending the function of the Executive. The pre-eminence of the Executive is also due to strict adherence to party discipline and the untiring efforts to keep the party in power. The Executive is an the more powerful in dictatorial states.

Next we come to the relation between the Executive and the

Judiciary. The Judiciary exists for the application of laws in particular cases and when this has been done the Executive is to enforce the law in accordance with the decision of the Judiciary. In some States the Executive has been made subject to the ordinary courts for acts done by it. Thus in England where there is the rule of law the executive officers are liable to be tried by the ordinary courts for offences committed by them in their official capacity. But instances of such dependence of the Executive on the Judiciary are rare. In almost every constitution the Chief Executive has been exempted from the jurisdiction of ordinary courts. For the trial of offences committed by the officers, an administrative court is created and this court is composed partly of the executive officers and partly of the judges.

The exemption of the Executive from the control of the ordinary courts and the provision of an extraordinary tribunal for the trial of offences committed by the executive officials are justified because they secure an independence of the Executive and contribute greatly to the maintenance of unity of the executive power.

Sec. 7. Types of Republican Executive.

In Republican forms of government we find that the chief executive officer is known as the President. The power of this president is not the same everywhere. This difference in power and position accounts for the three-fold classification—the American type, the French type and the German type. The American type which includes the Presidency and governorship of the United States as well as those of the Latin American States, possesses the following characteristics:—

(i) The Executive Head is completely independent of the Legislature in respect of the modes of election.

(ii) He holds his office for a fixed period of time and exercises all those powers which are conferred upon him by the constitution.

(iii) He is not responsible to the Legislature for his political acts and his responsibility to the Electorate is practically unenforceable.

The French type represents the antithesis of the type described above. The French constitution is very exhaustive in the enumeration of the powers of the President and at the same time takes away his independence by the addition of a brief clause which runs thus:—
Peculiarities of the French type. “every act of the President must be countersigned by a minister who is responsible to the Legislature.” The President of France neither reigns nor governs. He is a nominal

figure-head and may even be compelled by the Parliament to resign.

The German type gives the President an intermediate position. Again, the cabinet system of Government which the new constitution provides for is incompatible with the idea of an irresponsible executive of the American type. Germany however did not adopt the French model and could not conceive of a president who would be elected by the Legislature. The New German constitution therefore provided for the election of the President by the people. This went to strengthen the position of the President and make him independent of the Legislature. The constitution also has given larger powers. Party organisation is stronger in Germany than in France. Unlike the French President he can disapprove of bills passed by the Reichstag and submit them to a popular Referendum.

Sec. 7(a). A Comparative study of the Position and Powers of the Executive in Great Britain, France, U. S. A. and Germany.

In Great Britain the king is a titular executive head and his function practically ends with the selection of Prime Minister from the party-in-power.. The Prime minister is the active executive head and remains in office so long as he can command a majority in the Legislature. When backed by an effective majority he is, as Sir Sidney Low tells us, more powerful than the American President inasmuch as he can make and alter any law and can impose any tax he likes. The President of U. S. A. has a much restricted sphere of activity, but he is supreme in his sphere and is not at all dependent upon the support of the Legislature. During the term of his office he cannot be removed by an adverse vote in the Legislature. He is the real head of the Executive and the members of his cabinet owe their appointment to him and are therefore held responsible to him alone.

The position of the French President who is elected for seven years by the two Houses of the French Parliament sitting together as a National Assembly is inferior to that of the Presidents of U. S. A. and Germany. The French President owes his appointment to the Legislature and cannot claim any independence against it. His position is even inferior to that of the King of England. The King of England reigns but does not govern while the President of France neither reigns nor governs. Unlike the English monarch the President of France however can preside over the council of ministers and plays an important part in the formation of coalition and selection of ministers. The President of France cannot

however exercise any executive act except through his ministers who are responsible to the Legislature. The President of Germany who is elected by the people for seven years was in the past the nominal head of the Executive. The real executive was the Federal Chancellor who occupied a position analogous to that of the Prime Minister of England. The President of Germany has been entrusted with a larger number of powers but all his orders and decrees require the counter-signature of a minister. Under the Nazi regime the Leader and Reich Chancellor assumed the position of a dictator and had supreme control over the entire governmental machine. The Enabling Act was passed in order to give the resolution of the Cabinet proclaimed by the Chancellor the sanctity of law. The defeat of Germany has crushed the Nazi authority.

Sec. 8. Executive authority of a Dictator in Totalitarian States.

In the Totalitarian states democratic ideals of government which make for wholesome relation between the Executive and the Legislature are losing confidence and dictatorship has already gained support in many States. This dictatorship means nothing more than the centralisation of all authority—executive, legislative and judicial in the hands of a single person who becomes practically omnipotent. The Legislature no doubt is allowed to drag on its dreary existence but it must contain men who belong to the political party of the dictator. No other political party can legally continue its existence and opposition in the Legislature is at an end. The Legislature thus is reduced to the position of a farcical assembly which has to make laws in strict conformity to the will of the dictator. The Judiciary also is brought under the grip of the dictator. The judges are appointed and dismissed by the dictator and have got to administer justice in accordance with his direction. Sometimes special tribunals are created for the trial of political offences. The system of appointing law assistants was in vogue in the dictatorial Italy and Germany. The independence of the Judiciary which is regarded as the best guarantee of liberty finds no room for existence in a dictatorial regime.

The dictator has strict control over the officers of the executive department. They are answerable for their conduct to him alone and the traditional institution of ministerial responsibility becomes a thing of the past.

Sec. 9. Growth of Civil Service.

Along with the bureaucratic system of government there has grown up in almost all modern States a habit of maintaining a professional civil service. Every State is now anxious to have a per-

manent staff of officials to ensure efficiency of administration. The art of administration has been found to be too difficult to be mastered by an amateur who on party grounds is accidentally placed at the helm of executive affairs. It has got to be studied closely and with a whole-hearted devotion which can only be expected from a person who makes the civil service a profession of his own. To attract really meritorious men to the service it has been the practice among modern States to arrange for competitive examination for recruitment and to prescribe a high minimum standard of academic qualifications. This function of recruiting candidates has been generally assigned to a Civil Service commission. Satisfactory result may ensue if adequate efforts are made to develop organic connection between the university and public service.

Again, a mere scientific mode of selection will fail to attract really meritorious candidates unless the service itself holds out a bright prospect to those who want to enter it. This can be done by making provision for good salary, security of service, promotion on the basis of competence and old age pensions. Many modern States have appreciated the necessity of such provisions and made the civil service attractive by incorporating them in the Civil Service Rules.

Another point which needs emphasis in this connection is the relation between the members of the service and the political executive or as it is ordinarily called the Ministry. It is doubtless that the ministers as departmental heads can legitimately claim implicit obedience of the departmental staff which contains members of the civil service. The members of the civil service are also under obligation to keep their masters informed of every important affairs of the departments; but it will never be safe to entrust the appointment and removal of these permanent officials to the ministers who are often influenced by party politics. If the ministers are so entrusted there will inevitably be ample scope for corruption and favouritism which in a way account for the spoils system in America and dismissal in France of a great historian from his life-long post to make room for an incompetent political nominee. "The public service" says Laski "must therefore, live under the aegis of two definite rules. It must be appointed by persons other than those in the Cabinet or its subordinate political posts; and it must be appointed under rules which reduce to minimum the chance of personal favouritism."

Questions and Answers

Q. 1. Give an outline of the legislative and executive functions of Government. Are there any general principles underlying the exercise of these functions? (C. U. 1918).

Ans. See Sec. 6.

Q. 2. Distinguish between absolute veto, qualified veto, suspensive veto, showing the occasion for the exercise of each.
(C. U. 1921).

Ans. See Sec. 6.

Q. 3. Compare and contrast the powers of the President of the U. S. A. with that of the President of the French Republic.
(Madras 1936).

Ans. See Sec. 7(a).

Q. 4. Discuss the relation between the executive and the legislative organs of the State. (C. U. 1942).

Ans. See Sec. 6.

Q. 5. What are the chief requisites of a properly organised executive in a modern State.
(Punj. 1943).

Ans. See Sec. 2(a).

CHAPTER XVIII

THE JUDICIARY

Sec. 1. The Functions of the Judiciary.

The function of the Judiciary is to apply the existing laws to particular cases. When a man has committed a particular offence and is brought before the Court for trial, it is the function of the judge to determine whether the person charged with an offence has really committed the offence and if he is found guilty, what punishment he deserves according to the existing law. The judge has to apply the law as it stands and cannot refrain from applying the same because in his opinion the law is not good. Another function of the judiciary is to interpret the law. The law may be ambiguous but the judge is there to explain fully what it means. The judges are to try various cases and some of them may not be covered by the existing laws. When such a contingency arises the judges have to decide those cases according to justice, equality and common sense. These decisions are followed in similar other cases. In this way the judges have contributed greatly to the development of law.

Besides these strictly judicial functions, there are certain non-

judicial functions which the judicial tribunals are found to perform. They appoint certain public officials, issue circulars for the systematic work of their departments, grant licence, appoint guardians and trustees, and perform miscellaneous duties which do not strictly fall within their domain. The judges have sometimes been found to give advisory opinions on questions of law which are referred to them by the Executive or the Legislature. In England they also pronounce their declaratory judgments when interested parties, who have not actually filed any suit, solicit their opinion on a matter in dispute. In some States notably the United States of America, the Judiciary enjoys an inherent power of interpreting the constitution and of declaring that statutes passed by the Legislature are *ultra vires* or in excess of the power of the legislatures which enacted them. The principle of judicial control which all States having federal constitutions have adopted, has been criticised on the ground that it contravenes the cherished doctrine of separation of powers and brings in a system of judicial oligarchy which is inconsistent with the true principles of democracy. These criticisms, however, do not find favour in the United States where the constitutional division of competence will have no meaning unless there is a Supreme Court to keep each department within its prescribed and definite sphere.

Sec. 2. The Constitution of the Judiciary : How to secure Independence for the Judiciary.

The Judiciary may be constituted in these different ways viz. :—

- (i) Election by the Legislature, (ii) Popular election and (iii) Appointment by the Executive.

The first method which is in vogue in Switzerland is defective inasmuch as it will lead to election of party candidates. These judges may not possess the spirit of independence which is required in them. Again, there may be persons of superior talent who are excluded simply because they do not belong to the party-in-power. This method is also inconsistent with the principle of separation of powers and makes the judges dependent upon the Legislature.

(ii) *Popular Election* :—This method leaves election of the judges in the hands of the people or Electorate who do not know the qualities that are essential in a good judge. The judges elected by them will generally be incompetent and cannot be expected to discharge their judicial duties satisfactorily. Again, the popular election means the same thing as party election. The

Non-judicial
functions.

Judiciary in
U. S. A.

How Judiciary
is constituted.

Defects of
popular
election.

judges who have to pander to the opinion of the dominant parties cannot use their judicial discretion independently. In spite of the defects the popular election prevails in the majority of States of the American Federal Union.

(iii) *Appointment by the Executive* :—This method which gives the power of appointing judges to the Executive has been considered as the best of all possible methods. Merits of such an appointment. The Executive which happens to be under the control of men of superior intelligence is in a position to determine the qualities that are essential in a good judge and can appoint those who possess these qualities. This method can secure independence of the Judiciary if recruitment is made on the result of a competitive examination and if the Executive is denied the power of removing the judges at its sweet will and pleasure. The merit of the system has increased the number of its supporters and it has been adopted with success in almost all civilised States. In Great Britain judges are practically appointed by the Lord Chancellor but the latter has no power to remove the judges once appointed.

Laski admits the soundness of the method of appointment of judges by the Executive but at the same time apprehends that an unrestricted choice by the Executive may result in nomination of party candidates. To avoid this he suggests that every such appointment made by the Minister of Justice should win the approval of a standing committee of Judges which will be competent to assess the qualification of men likely to prove successful on the bench.

Three qualifications are urgently necessary in a judge. He must have a sound knowledge of the laws, must be a man of good character, must be honest, independent and faithful to the constitution. In order that these qualifications may be ensured, the judge must be given a good salary and must enjoy a tenure of office which is neither too short nor too long. The constitution of the State should give the Judiciary an independent position in order to protect the rights of people against interference by the Executive and the Legislature. In a majority of States the rule is that a judge should hold his office during good behaviour. Again, a judge should not be removed at the sweet will of the Executive because in that case the judge would lose much of his independence. In Great Britain a judge can be removed by the King on an address from both the Houses of the Parliament. In U. S. A. they are appointed by the President with consent of the Senate and cannot be removed except by impeachment.

Sec. 3. The Organisation of the Judiciary.

In modern States the organisation of the Judiciary has been

based on certain common principles. The courts are classified into civil and criminal according to the nature of their work. Each of these types of court has at the top a supreme court which represents the highest court of appeal or revision. Under the control of this Supreme court there is a number of trial courts and lower appellate courts having definite jurisdictions both pecuniary and territorial. In the Federal Union one more distinction is drawn between the State courts and the Federal courts.

The organisation of courts in Anglo-Saxon countries differs from that in the continental European countries in two respects. First, in the Anglo-Saxon countries every court except those of appeal consists of a single judge while in Germany, France and other countries of continental Europe the judicial tribunals consist of a number of judges sitting together. This plurality of judges is a safeguard against the arbitrary exercise of judicial authority and minimizes the influence of the public prosecutor or a particular magistrate trying criminal cases. But the system imposes a heavy burden on the public exchequer and for that reason cannot claim universal support. Secondly, in the Anglo-American system the judges are to go on circuit from one county to another so that the people may get justice with less trouble and expense. In the continental Europe the courts do not move and people whose rights have been infringed have to run to the place where the courts have been localized.

Sec. 4. The Administrative Courts.

In the continent of Europe administrative courts have been created for the determination of disputes that may possibly arise between the private individuals and the administrative officials themselves. In France where the system of administrative courts came into existence at the time of the Revolution, the creation of a separate tribunal was supported by the writings of Montesquieu who recommended a separation of powers among the three important departments. This system has found favour in Germany and has been accepted by a number of States in the Continent.

The system of administrative court can claim the following advantages : First, subjection of the executive authorities to the jurisdiction of ordinary courts generally hampers the prompt and efficient administration. Secondly, the judges of the ordinary courts who are selected for their general proficiency cannot have administrative experience and for this reason they cannot

decide administrative controversies. Thirdly, the judges are not expected to understand adequately the circumstances which necessitate the adoption of a particular measure and the result will be that the ordinary courts will find no justification for it. Fourthly, the ordinary courts will generally have a tendency to protect the private rights of the citizens and will punish officials whenever they infringe any such rights without considering the circumstances under which such rights were violated. Fifthly, the judges will treat the private individuals and the officials alike and such a treatment cannot but affect the efficiency of the officers and impede their activity.

Sixthly, the fear that administrative courts have a tendency to administer justice at the behest of the Government and that the citizens will be denied their lawful claims has little or no foundation. Seventhly, the judges of the administrative courts do not lose their independence because of the provision that they are removable at the pleasure of the Executive. Lastly, the procedure followed in the French administrative court is very simple and an aggrieved person can get his remedy against the State with less expense.

Several arguments may be advanced against the system of administrative courts. The chief argument is that a provision for a separate tribunal consisting mainly of the members of the Executive to try cases between private individuals and public officers is detrimental to legal protection which the citizens are entitled to enjoy against the officers of the State. Again, the tribunal will not take into consideration the legitimate rights of citizens and will sometimes attempt to justify infringements of private rights on the ground of public policy. The division of judicial functions between two distinct tribunals will often give rise to disputes of jurisdiction and necessitate a separate court of conflicts.

In England as in countries where Judiciary is based upon the English system the administrative courts are unknown. There are, however, numerous bodies which exercise quasi-Judicial functions and may be described as administrative tribunals. Again, certain classes of officers have been given immunity from the jurisdiction of Common Law Courts. The Public Authorities Protection Act of 1883 makes provision for cases where the officials cannot be sued for their acts.

..Sec. 5. Relation between The Judiciary and the Legislature: Between the Judiciary and the Executive.

Ordinarily the Legislature makes the law, the Judiciary has to apply the law and interpret it in individual cases. But this is not

the only relation that subsists between the two departments. The Judiciary also makes the law. It has to decide cases which are not exactly covered by the statute law. These decisions which are generally based upon equity and good conscience are cited as precedents when similar cases come before the court. Again, in States where the constitution definitely lays down the powers of the departments, the Judiciary can declare any law unconstitutional when according to its opinion the Legislature is not competent to pass such laws. In the United States the Judiciary can declare the law passed by the Legislature *ultra vires*. Another important point that should be noted in this connection is that the Legislature or one of its houses performs certain judicial functions. In Great Britain the House of Lords is the highest court of appeal. In some countries the upper chamber forms a tribunal to hear impeachment against high executive officials. The judges in certain States are controlled by the Legislature in the matter of appointment. In U. S. A. the senate has to sanction the appointment of judges made by the Executive.

Next we come to the relation between the Judiciary and the Executive. The Executive has to execute the laws in accordance with the decisions of the court. In the second place the executive officers are controlled by the Judiciary inasmuch as they are in many States amenable to the jurisdiction of ordinary courts. The Chief Executive Head has however, been exempted from the jurisdiction of courts in order to ensure his independence ; but his power of making rules and regulations can, as in America, be questioned by the Judiciary when such power exceeds the limits imposed by the constitution. The Executive in its turn controls the judicial appointment and exercises certain judicial powers including the power to pardon an offender and the power to try military offences through court martials. The Judiciary, again has to perform a number of functions which strictly speaking, fall within the domain of the Executive.

Sec. 6. Comparative study of the Judicial System of England, France and America.

In England the judges are appointed by the Crown on the recommendation of the Lord Chancellor and hold office during good behaviour. They are not removable except on the joint address of the two Houses of the Legislature. In France too we find that the judges who are appointed by the Minister of Justice on the result of competitive examination remain irremovable at the instance of any agency other than the court of Cassation acting through a committee of seven judges. In U. S. A. the judges are appointed by the President with the consent of the Senate and can be removed by impeachment by one chamber of

the Legislature and trial by the other. In U. S. A. where the principle of separation of power has found its greatest support, the judges enjoy greater independence than the judges of the courts of England and France. The former can while the latter cannot question the legality of acts enacted by the Legislature. Again in England the close relation that lies between the Judiciary and the Executive is maintained by allowing the Lord Chancellor who is a prominent member of the Cabinet to select the judges and to reserve for himself the highest judicial position. In France the Judiciary is regarded as a branch of the civil service and the administrative courts contain many members of the Executive. In U. S. A. on the other hand the Executive remains unrelated to and unrepresented in the Judiciary. The Executive Head in U. S. A. again is immune from the control of the Judiciary so long as he remains in office. The position is otherwise in England and France where the Judiciary can try officers who have committed any breach of law. As regards contribution to the growth of law, the Judges of France occupy a position inferior to that of the judges in England and U. S. A. In France where the law has been codified the judges are not allowed to build up case laws while in U. S. A. and England the judges have made immense contribution to the growth of case laws which are often quoted as precedents in the similar cases which come subsequently for judicial determination.

Questions and Answers

Q. 1. What are the functions and jurisdiction of the French Administrative Court? Discuss the advantages of and the objections to this Court. (C. U. 1924).

Ans. See Sec. 4.

Q. 2. "The rule or supremacy of law has been said to form one of the main characteristics of the English constitution." Explain this with reference to Administrative Law. (C. U. 1915).

Ans. See Sec. 4.

Q. 3. Discuss the merits and demerits of the Rule of Law and Administrative Law in the light of English and French experience. (Mad. 1935).

Ans. See Sec. 4.

Q. 4. What do you understand by the term "Independence of the Judiciary? Why is it necessary in a State that the Judiciary should be independent? What means are necessary for the purpose? (Punj. 1942).

Ans. See Sec. 2.

CHAPTER XIX

GOVERNMENT OF DEPENDENCIES

Sec. 1. Dependencies, Colonies and Dominions.

In ordinary discussion the two terms—colony and dependency—are loosely used to convey the same idea; but in political science a distinction is drawn between a colony and a dependency. The term 'colony' is derived from the word *colonia* which means a settlement for soldiers and scientifically speaking the term has come to mean a particular area to which a certain portion of the inhabitants of the parent country originally migrated and which is controlled by the parent country. The term 'dependency' does not carry such an idea of settlement. It means a country which is under the control of some foreign power and has no sovereignty of its own. The degree of control, however, varies from one dependency to another. Australia and New Zealand are colonies. Colony is a species of the genus "dependency". All colonies are dependencies but all dependencies are not colonies. Another term which is often used is 'dominion'. The term refers to self-governing colonies, i.e., colonies which have been favoured by Great Britain with administrative autonomy and which have responsible form of Government. Canada, Australia, South Africa, New Zealand, the Indian Dominion and the Pakistan are called dominions.

Sec. 2. Different methods of acquiring colonies.

We have seen above that colonies are created when people of one country come to settle in a new country which offers better chances in life; sometimes political and religious considerations play some part in establishment of new colonies. The exodus of people from England to America was due to these religio-political causes. Dependencies, however, do not arise from settlement alone. There are several other factors which go to create dependencies. Sometimes dependencies have been acquired by conquest. When a powerful nation conquers another, it controls the form of government of the conquered nation. Sometimes the weaker nation purchases peace by ceding a part of its territory. Thus Mauritius was ceded to Great Britain by the Treaty of Paris in 1814. Dependencies are also acquired by purchase or lease. Alaska was bought by the United States.

Sec. 3. History of Colonial systems.

The Phoenicians were first to attempt at a colonisation. Their

object was mainly commercial and they succeeded in establishing many commercial stations on the shores of the Mediterranean. While promoting their commercial ends they contributed much to the civilisation and culture of the aborigines of the West.

The Greeks came second in respect of colonisation. They were forced to establish colonies on account of invasions and internal strife. These were not subordinate to the mother country but they had the same type of government, the same religion and the same custom.

Next came the Romans whose object was to bring under their control the nations they conquered. They maintained different grades of colonies and conferred upon them different privileges. The term 'colony' had peculiar meaning among them and conveyed the idea of settling soldiers on a definite area.

In the middle ages there was no real colonisation. Modern colonisation began with the discovery of sea-route to East Indies and the discovery of America. The Portuguese and the Spaniards played the leading part in this colonisation. The Portuguese established various colonies in the East while the Spaniards worked so vigorously that at the end of the sixteenth century the New World from South America to Mexico came under their control.

In the seventeenth century the French and the British began to establish colonies in North America. A quarrel ensued between France and England and ultimately led to the expulsion of France from America. England continued her vigorous policy till the outbreak of the war of Independence. The colonies fought with the mother country and were successful. In this way England lost her colonies in America. England, however, gradually extended her control over India and other parts of the world till at last she succeeded in bringing under control nearly four million square miles in North America, as much in Africa, over three millions in Australia, nearly two millions in Asia besides innumerable islands and extensive sea coasts. Although France lost her American possession she acquired extensive possession in Africa, Indo-China, the island of Madagascar and many other scattered islands in many parts of the earth comprising an area of four millions and two hundred thousand square miles. Germany entered into the field of colonisation during the last quarter century and established protectorates and spheres of influence over South-East and South-West Africa. In recent times

The policy of the English and the French.

French possessions.

the United States has taken to the policy of colonial expansion and by Spanish War, by annexation and occupation has managed to extend her control over Porto Rico, the Hawaiian Group, the Philippines and other islands.

Sec. 3(a). Motives of Colonisation.

In the first place colonies have sometimes been established with a view to avoiding over-crowding in the parent State. The ancient Greek cities established colonies with this end in view. Sometimes people dissatisfied with the existing economic, political or religious conditions of their country chose to migrate and settle in new areas where the conditions of life appeared to be more attractive.

The activities of the missionaries have helped greatly in the matter of colonization. It is no exaggeration to say that England owes her foothold in Australia, Guiana and South and Central Africa to this missionary work of her priests. Sometimes colonies were established by superior nations with a view to satisfying the burning desire of imposing culture on inferior people.

The spirit of adventure and the increasing interest which people take in exploration have been important factors and have paved the way for colonial expansion. Desire for wealth or power has been another motive for the establishment of colonies. The modern idea of imperialism which usually leads to acquisition of new territories is another important factor. One more important motive is the desire for trade and commerce. This has been the case with India and British dominions in America.

The need of communication has sometimes led to the establishment of colonies. Thus the opening of trade route to India led England to acquire South Africa, to control the Suez canal and to create extensive interests in the Eastern Mediterranean and in Egypt.

To seek a profitable investment of surplus capital has been another motive for colonization. The foreigners invested their capital in new lands and required the protection of their parent states.

Sec. 4. Administration of Colonies.

In this section we shall discuss the system of administration which prevails in the British colonies. The colonies may be classified for the purpose of administration into (a) self-governing colonies, (b) representative colonies and (c) crown colonies.

(a) The self-governing colonies include Australia, Canada, South Africa, New Zealand, and the Irish Free State. The British Government has been convinced of their capacity to govern themselves and has extended their powers while reserving control in certain matters touching Imperial interests. These self-governing colonies are called dominions. India has in recent times attained this status. They have representative institutions and responsible form of government. New Foundland was regarded as a Dominion upto the 15th February, 1934 but since then its status is that of a crown colony.

(b) The representative colonies include those where the principle of election has been introduced but the control of Great Britain over the colonial affairs is still supreme. The executive officers are nominated by the Crown and are not responsible to the Legislature. Ceylon, Jamaica, Mauritius fall under this class.

(c) Crown colonies are those in which the crown retains control over legislation. The principle of election is absent and the government is carried on with the help of governors and other officers appointed by the Crown. These officers are responsible to one of the Secretaries of States and have to discharge their duties under the strict supervision of the colonial officers. The details of administration are provided for in the Letters Patent and instructions to governors. In some of these colonies members are nominated to the Legislative and the Executive councils. There are several other colonies where the Legislature consists of partly elected and partly nominated members. The protectorates include those territories which were formerly under the control of the foreign office but which were subsequently transferred to the colonial office for administration. They are too weak to maintain their position and have for that reason to seek the assistance of a stronger State. In return for the advantage of protection which the weaker State enjoys, it has to owe its allegiance to the stronger State and to leave to the latter the regulation of foreign relation. Zanzibar, Somaliland, Kenya, Uganda are instances of such protectorates. Protectorates should be distinguished from protected states which retain their sovereignty but come under the control of the Crown by virtue of treaties.

There are Mandated Territories which include South-West Africa, Togoland, the Camerons, the Tanganayiki territories. These territories which were formerly under the possession of Germany and Turkey are now administered by the United Kingdom, Australia, New Zealand and South Africa under mandates approved by the League of Nations.

Some territories in the Persian Gulf and in Arabia are designated as spheres of influence.

Sec. 5. Dominions and their autonomy : British Commonwealth of Nations.

The Dominions mean and include the self-governing colonies. Their status has been defined by the Imperial Conference of 1926 in the following words "Great Britain and the Dominions are autonomous communities within the British Empire, equal in status, in no way subordinate to one another, in any aspect of their domestic or external affairs, though united by a common alligiance to the Crown and freely associated as members of the British Commonwealth of Nations."

The dominions have responsible form of government and the real Executive is the Colonial Prime Minister and his Cabinet. The Imperial Government however retains the right to appoint the Governors who are instructed not to interfere in affairs which do not touch Imperial interest. In this way the autonomy of the dominions in internal administration has been secured. The Statute of Westminster, 1931 has added to the power of the dominions and substantially improved their status. It has taken away the effect of the Colonial Laws Validating Act, 1865 which formerly served as a clog upon the Legislative powers of the dominions. It has provided that no law of the dominion passed after the commencement of this act shall be void on the ground that it is repugnant to the Law of England, and that no act of the British Parliament will be binding on the dominions without their consent. By this Statute the dominions have been given power to make laws having extra-territorial operations and wide powers to make merchant shipping laws. The Judicial Committee of the Privy Council no doubt still remains the highest judicial authority but no appeal can be preferred to it except with the special sanction of Dominion Government concerned.

The right of the dominions to regulate their commercial policy and to enter into bilateral treaties has been recognised beyond any shadow of doubt.

In regard to determination of foreign policy the Dominions do not enjoy complete independence. The result is that if Great Britain is involved in war the dominions will automatically be involved in war. If they do not want to participate actively in war they should remain at least in state of passive belligerency. This is the reason why following the declaration of war by Great Britain in 1939 the Dominions made similar declarations in support of Great Britain. The Status of Union Act of 1934 has secured for South Africa independence even in the matter of declaration of war. The said Act authorises the Union to remain neutral in a

war in which Great Britain is involved and may even legally supply goods to the enemy during the time of war. The Act also has abolished Royal right to disallow Acts passed by the Union Legislature. The Irish Free State has abolished the oath of allegiance to the British Crown, the post of Governor-General and the jurisdiction of the Privy Council to act as a final court of appeal. The Free State citizens also have given up their status of British subject. From all these facts it is quite clear that the Dominions have got only to recognise the common Crown and are practically independent in every other matter which concerns them. They have also been given a voice in the determination of succession to the throne and we all know how the abdication of king Edward and the succession of George VI were approved by the Dominions.

One pertinent question which deserves careful consideration is whether the Dominions have right to secede from the British Empire. The Dominions are autonomous communities within the Empire. This suggests that they must remain as ever a part of the British Empire and their autonomy is limited in that sense. But the Statute of Westminster does not categorically deny the right of the Dominions to secede; on the otherhand the Dominions have been given right to make any laws they like. It is therefore clear that if the Dominions choose to pass acts authorising their separation from the British Empire their acts cannot be vetoed by the British Crown. Again, autonomy will become a sham autonomy in the absence of the right to secede from the British Empire.

Questions and Answers

Q. 1. Explain the relations between England and the Dominions. (Mad. 1934).

Ans. See Sec. 5.

Q. 2. Describe the place which the self-governing colonies occupy in the empire. What is the extent of their autonomy? In what respects are they subject to the control of the British Parliament? (C. U. 1928).

Ans. See Sec. 5.

CHAPTER XX

LOCAL GOVERNMENT

Sec. 1. What is meant by Local Government ? Broadlines of distinction between the Central and the Local Governments ?

In modern States distinction is often drawn between a central government and a local government, but it is very difficult to define what local governments mean. In the united states the local governments mean and include those organs of government, which are not completely subordinate to the central government but have been given independence in certain matters within prescribed limits. The distinction between the two is based neither upon the extent of territory nor upon the number of population. It is based upon the kind of work done.

If we study the various functions of government we will find that there are certain functions which are of general interest and for this reason they can be easily and efficiently managed by the central government having authority over the whole State. The functions include matters of war and peace, tariffs contracts, marriage and divorce. There are many other functions such as water-supply and lighting which have to be performed with reference to the needs of particular areas and can be managed efficiently by a body of persons having local experience. For the performance of these functions local bodies are constituted and they are generally given freedom of action in these matters.

There is another point of distinction between central and local governments. Ordinarily the central government is created by the constitution and its nature can be modified only by amending the constitution. A local government on the other hand may have no legal position in the constitutional system and its organisation may be controlled by the national Legislature.

The position is otherwise in the U. S. A. where the Local Government forms part of the constitution of the States and its organisation can be amended by the people of the State Concerned.

Sec. 2. The Advantages of Local Government. Democratic government can succeed only on the basis of local self-government.

The necessity of a local government is keenly felt in almost all States. This is because local government adds to the efficiency of administration. The Local bodies are in a position to know the condition of the people and can govern the area in a manner which promotes

Advantages
of Local
Government.

local interest. Another advantage which follows from local government is economy.. The expenses involved in certain acts which benefit a particular locality are borne by the people who are benefited and in this way the central government is relieved of the responsibility of making provision for those expenses. Again, once we admit that the local people should contribute wholly to the expenses we cannot deprive them of the control they demand over local administration. The division of the work and responsibility of administration also reduce greatly the burden of administration which would otherwise fall upon the central government. The local government knows fully the Legislative needs of the locality and can suggest to the central government the passing of bills which in its opinion will contribute to the well-being of the people. Again, the system of local government has some educative value inasmuch as it promotes the interest of the people in public-affairs and helps them to acquire some experience in those spheres. Local institutions are indeed the training grounds for politicians and administrators. They inculcate in people the spirit of sacrifice for national cause and develop the faculties which are required in able administrators. The party organisation which is at the root of every democratic organisation manifests itself in these local units. Success in the local elections adds to the strength and efficiency of the party and in a way paves the way for its success in the national election. Again, people who can manage their local affairs with efficiency can be expected to bear the burden of administration of the Central Government more satisfactorily. Lastly, an administration from without lacks the vitalising ability to conform to local opinion and is not consistent with democratic ideals. It does not stand on the creative support of citizens and utterly fails to evolve either interest or responsibility in them.

Sec. 2(a). The Evils of Local Governments : How to check them.

The system of Local Government sometimes brings certain evils which we cannot ignore. The evils generally spring from the injudicious distribution of powers between the central government and the local government. Thus if matters which effect the general interest of the community are made over to the local governments for administration, serious consequences will follow and people will suffer greatly on account of the want of uniformity of rules and regulations. It will then involve a sacrifice of greater knowledge and capacity which are naturally associated with central administration and entail serious economic loss.

Again, great care should be taken to avoid the predominance of one particular individual or class in the system of local organisation. The local bodies should represent all sections of the com-

munity and the various interests which exist within the areas under their control. Unless this is done, there is great chance of misgovernment and the system of local government will surely fail to achieve its ends.

Again, creation of local government, as Laski tells us, may in many respects mean an offering of hostages to fortune. This is true when the persons who come to take charge of it are too conservative to adopt any scheme which would go to ameliorate the distress of the poor. Lastly, great difficulties are encountered in the matter of delimitation of areas for the successful and more economical administration of local areas. Historic tradition and geographical consideration have lost their importance in the civilized States. Areas must be defined with reference to density of population and to various functions or services which are indispensable for local improvement. There must also be adequate room for the solution of a common problems.

Sec. 3. The Constitution of Local bodies : The Centralized Vs. Decentralized system.

In almost all States local bodies exist but they are not constituted in the same manner nor do they enjoy the same powers everywhere. There are two well-known principles which govern the constitution of local bodies. The one is the principle of centralisation which holds good in France and Germany. According to this principle the central government has to appoint the members of the local government and to exercise rigid control over local bodies without giving them adequate opportunity for the exercise of their discretion. This system has been attacked

The principle of centralisation.
on the following grounds : (i) It destroys the independence and power of initiative of the local bodies. (ii) Under the centralized system

the local bodies are to carry out the will of the central governing authority and are responsible to the said authority. The result is that public opinion is disregarded and the local authorities do not care to administer the local affairs with reference to local interests. The centralised system ensures the

Advantages of the principle.
appointment of trained officials for the administration of local affairs and promotes efficiency, but this efficiency of the bureaucrats cannot outweigh the loss which follows from the involuntary indifference of the people in matter of local concern.

Another principle is that of decentralisation according to which local bodies are elected by the people and enjoy wide discretionary powers. The central government retains only the general power of control and supervision over them. This principle has been adopted by the United States and to some

extent by the United Kingdom and can claim the following advantages :—First, the citizens take part in electing members of the local bodies and have to take share personally in the administration of local affairs. In this way the citizens get political training. Secondly, the responsibility of the local bodies to the Electorate is ensured and the administration is carried on with great efficiency. Thirdly, the central government is relieved of the responsibility in local affairs.

These benefits follow when the members of a local government are chosen directly by the people. Indirect election cannot maintain a direct contact between the elector and his representatives and will surely stimulate the bureaucratic tendency which is unchecked by any true public opinion.

The members chosen should have general competence or magni-competence to deal with the various local problems and the system of adhoc bodies should be avoided because it will bring candidates who will have no general concern for the quality of administration but only a special concern in some aspects of it. The members again, must be fulltime and paid servant of the local government ; otherwise the local bodies will be representative of the richer classes of the community and administration will be carried on without any reference to the needs of the poor. Efficiency of administration will also suffer by reason of the fact that the administrators have their mind engaged in other advocations and come to spend their leisure hours which are too short to make any solution of local problems possible.

Sec. 4. Organisation of Local Government : Ideal organisation to achieve its ends.

The organisation of local government is not based upon the same principle in every State. In some States there is legislative centralisation with administrative decentralisation. There are also States where there is administrative centralisation with legislative decentralisation. The local governments are given power to frame laws but the administration of these laws is left in the hands of the central government. Again, there are States where we find part-centralisation and part-decentralisation in both the legislative and the administrative spheres. This latter principle has found recent acceptance in England and in the United States of America.

Every local council should consist of representatives of the rate-payers elected by a direct method. This council should again be assisted in each sphere of its activity by an advisory committee consisting of representatives of different interests directly or indirectly concerned with that particular activity. These com-

mittees should be empowered to make suggestions, initiate enquiries and to make announcement of larger issues. This represents the classic Anglo-American model which ensures a direct and continuous relation between the government and public opinion. Again, expert opinion counts much for the success of local administration. To make such opinion effective it is also desirable that the whole council should be divided into as many number of the committees as there are subjects to be administered and each such committee should be compelled to co-opt to membership the representatives of the vocations allied to their work. These representatives should have no vote to cast but have a right to voice their opinion and make it clear and impressive so as to carry weight with the committee.

The members of the Local Council should be elected on the basis of universal adult franchise and by means of direct election. The number of members should not be too large with due regard to area under administration. The Legislature should consist of one House only and the Executive should be held responsible to it.

The success of local administration depends also on its ability to evoke community spirit. When this has been done the citizens will be moved by patriotic spirit to render their whole-hearted support to the elected council and the committees thereof in their ceaseless activity to achieve their objectives. Again, co-operation between two or more local authorities to solve their common problem may contribute greatly to the success of local administration.

The area of local government differs in different States. These administrative areas are determined with reference to historical and geographical conditions and sometimes with reference to density of population and function. Areas and powers of Local Governments. The extent of power which these local governments enjoy depends upon the political condition of people and on several other factors. They may have full powers in certain matters while they have limited powers in matters which affect the interest of the central government.

Sec. 5. Functions of Local Government.

The functions of local government include or should include those which have reference to the peculiar needs of the locality under its charge and cannot for that reason be efficiently performed by the Central Government. The primary concern of every local body is to see that the area under its control is provided with sanitary, drainage, good drinking water, conservancy arrangements and charitable dispensaries. The local authority has also to prevent adulteration in foodstuff and insist on cleanliness in all

possible ways. The secondary functions include imparting of free or aided primary education, the construction and repair of roads, maintenance of park and bridges and promotion of local safety against crimes. Some major local bodies are found to render certain public utility services such as provision for water-supply, gas and electric light with a view to adding to civic amenity.

Sec. 6. Relation between the Central Government and Local Governments.

The question which we have got to discuss in this section relates to the nature of control which the central government will have over local bodies. Should these local institutions be deprived of autonomy in their own sphere and serve the people in strict accordance with the orders which the central government may be pleased to give? If this position is accepted the local government will surely lose their powers of initiative and fail to attract men of independent spirit. The administration will have little or no touch with local needs and experience and fail to achieve any satisfactory result. The object of local government can be fulfilled only when the institutions are given full autonomy within the limits prescribed by the Central Legislature. These limits should be imposed with particular reference to the efficiency of the local people to undertake the responsibility of government. The limits, again, should be imposed with a view to securing uniform standard of attainment. When this has been done the central authority should retain nothing more than the general right of supervision over local authority.

In enacting the statutes care should be taken to follow the German model in enumerating the powers of the Central Government and leaving the residual powers to the local authorities.

Sec. 7. Local Finance : Financial autonomy.

In order that the Local Government may discharge its functions efficiently it must be provided with adequate resources. Accordingly, the local government of every State has been authorised to impose certain kinds of taxes and fees. The principle of assessment bears a close relation to the benefits conferred and costs incurred. The local authorities can raise revenue by levying local rates on holdings and properties and by imposing betterment charges. Sometimes certain kinds of fees such as licence fees are imposed by the local authorities for certain specific purposes. When the revenue thus raised fails to meet the local expenses the central government has been found to extend financial assistance by a system of grants-in-aid. Sometimes certain taxes collected by the central government are assigned wholly or partly to the local bodies. In times of emer-

gency the Local Government can borrow money on the strength of its assets and thus supplement the ordinary revenue.

One important question that deserves consideration in this connection is the autonomy of local bodies in the sphere of local finance. In some modern States local governments have been favoured with separate sources of revenue so that they can easily adjust their taxation in response to financial demands. Such a separation which is to be found in Great Britain gives free scope for improvement and affords greater facilities for independent action. But complete separation is not desirable. The Central Government should retain the right of supervision atleast over local finance and warn the local government against extravagance. A complete control of the Central Government does not contribute to local autonomy and cannot promote economy in administration.

Questions and Answers

Q. 1. What are the merits of Local Government ? Discuss the proposition that democratic government can succeed only on the basis of Local Self-government. (Punj. 1939).

Ans. See Sec. 2.

Q. 2. The distinction between Local and Central Governments lies partly in their relative constitutional positions and partly in the nature of public services performed (Leacock). Explain. (Punj. 1941).

Ans. See Sec. 1.

Q. 3. Compare the merits and defects of Centralised system with those of the Decentralised system of Local Government.

Ans. See Sec. 3.

Q. 4. What are the broad lines of distinction between Central and Local Government ? (Cal. 1944, Bom. 1930).

Ans. See Sec. 1.

CHAPTER XXI

GOVERNMENT OF GREAT BRITAIN

Sec. 1. Historical.

The Constitution of Great Britain has been a continuous growth. It is interesting to note the gradual process of development. The first noteworthy stage was the Anglo-Saxon period. During this period England was divided into several independent kingdoms and there were as many kings as there were kingdoms. These small kingdoms were composed of a number of 'hundreds' which again meant a combination of communities. Each of these kingdoms had its general council which advised the king concerning the common interests. Gradually these isolated kingdoms were formed into a single kingdom and came to be designated as the United Kingdom and the powers of the general councils of the smaller kingdoms passed to a great council—the Witenagemot—which was composed of the wise men of the time. The Witenagemot the membership of which was limited to the chief men of the shires, advised the king in matters of legislation, taxation and appointment. It was the supreme court of the kingdom and enjoyed the prerogative of choosing or when occasion arose, of deposing the king.

Next came the period of the Norman conquest which brought considerable changes in the administrative machinery of England. Feudalism left the administration of local areas in the hands of feudal landlords and the previous organisation disappeared. The king was supreme. The *Witenagemot* continued its existence under the name *Commune Concilium* or the Great Council, the constitution of which was based upon land ownership. This *Commune Concilium* was too great a council and met only three times a year. For this reason an inner council known as Permanent Council the membership of which consisted of two archbishops, the justiciar, the treasurer, the chancellor, the steward and several other high officials advised the kings in all matters executive, legislative and judicial. In the subsequent time the permanent council became the Cabinet.

In course of time out of the Great Council several courts came into existence and took charge of the judicial functions of the Crown. The Court of Exchequer was entrusted with all cases in which the king was directly concerned. There was the Court of Common Pleas having jurisdiction over all civil

cases between subject and subject. There was another court known as the Court of King's Bench having control over local justice and trying all cases which did not fall within the jurisdiction of other courts. Lastly, there was the Court of Chancery which tried cases for which the common law did not provide any relief and granted equitable reliefs to the suitors.

The Great Council began to develop slowly but representative idea was unknown till the reign of king John who summoned four discreet men from every shire. This representative idea obtained further support from Montfort's Parliament in 1265 which consisted of barons, clergy, four knights from each shire, two citizens from each city and two burgesses from each borough. In the Model Parliament of Edward I as many as 400 members were summoned. After the reign of Edward I the Parliament ceased to be a temporary political association but another century passed before the Parliament assumed the present form. At first there was only one House but by the middle of the fourteenth century the greater barons and the greater clergy formed a single House known as the House of Lords, and the House of Commons was formed by the lesser barons, the knights, citizens and burgesses.

The Parliament thus constituted was at first merely an advisory body but gradually it came to have financial powers regarding taxation. As a result of this the Parliament gained additional strength and ultimately it came to have the right of initiating legislation. At first the House of Lords alone enjoyed this solemn right but Henry VI was the first to confer this right upon the House of Commons.

During the Tudor and the Stuart period the Parliament had to face the absolutism of kings who ruled arbitrarily without the consent of the Parliament. The Legislative powers of the Parliament were ignored and royal proclamation became the source of Legislation. This struggle between the Parliament and the kings ended in a revolution which caused the abdication of James II. During this period of struggle the Parliament however, made considerable progress. At first only those lords who received writs could attend the House of Lords but gradually this practice was abandoned with the result that lords once summoned were always summoned and that after the death of a lord his eldest son was summoned. In the seventeenth century the *Septennial Act* was passed which ensured long and regular session of the House of Commons. The Principle of election to the House of Com-

The Great Council.

Model Parliament.

Abolutism of kings during the Tudor and the Stuart period.

The Septennial Act.
The Act of 1701.

mons was remodelled by the Reform Act of 1932. The Power of the House of Commons was enhanced greatly by the Parliament Act of 1911.

We have already dealt with the permanent councils of kings. In course of time this council became too big to ensure unity, quickness and privacy of business. For this reason out of the permanent Council another council known as the Privy Council came into existence. This inner circle emerged during the reign of Henry VI (1422-1461) and became the chief administrative and judicial body. This council again became too large to serve any useful purpose. Another inner council was urgently called for and this led to the creation of the cabinet which now plays an important part in the Government of Great Britain. At first this cabinet was composed of the few favourites of the king. During the reign of Charles II it was composed of five members and was known as 'cabal' which represented the first letters of the names of the favourites. The Cabinet was in the beginning chosen by the king and had no real power. With the growth of political parties in England, the Cabinet, at first came to consist of members of both the parties (Whigs and Tories) ; but in such a Cabinet there could not but be difference of opinion which hampered greatly its activity. William III appreciated this difficulty and composed his Cabinet not of the leading members of only one party. During the reign of George I the prime minister came for the first time to interfere in the affairs of the Cabinet. The Cabinet began to develop gradually and at the end of the eighteenth century it came to be governed by the following principles :—(1) The members should belong to the same party. (2) They should be members either of the House of Lords or of the House of Commons. (3) They should be subordinate to the Prime Minister. (4) They should command a majority in the House of Commons and should be responsible to the House in a body.

Another important fact in the growth of British Cabinet was the formation of 'War Cabinet'. A coalition ministry came into existence and an inner cabinet known as War Cabinet was formed at every time when England declared war.

Sec. 2. The British Constitution : its Characteristics.

De Tocqueville, the eminent French critic says that British constitution does not exist. This is true only in the sense that there is no definite document in which all the rules of the constitution can be found. The English constitution is to a large extent an un-

Origin of the
Cabinet.

The principles
underlying
government.

Where to be
found.

written constitution and is to be found in statutes, in judicial decisions, in customs and in conventions.

Secondly, the English constitution is unitary and flexible. The constitutional laws can be made and amended by the ordinary Legislature with as much ease and as freely as other laws. In this sense there is no distinction between the constitutional laws and ordinary laws.

Thirdly, the English constitution is the product of gradual development. It is a growing constitution and has reached the present stage by gradual process of development.

Fourthly, the English constitution is characterized by the rule of law. Law is equally applicable to all irrespective of position. In England everyone is amenable to the jurisdiction of ordinary courts and is governed by the ordinary laws. Again, in England no man can be punished without a regular trial in courts of law.

Fifthly, unlike other constitutions the English constitution is the result and not the cause of the laws of the land. In the United States we find that the rights of the citizens are defined by the Constitution but in England these rights follow from the general law and the constitution is founded upon these individual rights.

Sixthly, the English constitution records many instances of divergence between theory and practice. In theory the King-in-Parliament is the supreme legislative authority but in practice the House of Commons has virtual control over legislation. Similarly, the Cabinet is, in theory, the executive department but in practice it initiates many important legislative measures.

Seventhly, the English constitution is, as Anson says "convenient rather than symmetrical." It is like a house built by many hands at different periods.

Eighthly, the English constitution is one of checks and balances. The Cabinet is controlled by the Parliament in the same way as the latter is controlled by the former. The Parliament controls the Cabinet by withdrawing supply of funds while the Prime Minister can control the Parliament by threatening a dissolution of the Parliament.

Ninthly, the English constitution is essentially a judge-made constitution. The unwritten and inexhaustive character of the constitution leaves many things to be supplemented by judicial decisions. The

judicial decisions again determine the true implication of statutes and have been the source of valuable constitutional rights.

Lastly, there is the sovereignty of the Parliament. The Parliament is both a constituent and a legislative body. It can pass, amend or repeal any law of the land; there is none to question its authority. Of course the Crown has to give his assent and no law is valid unless it receives the royal assent but this assent has never been refused since the reign of Queen Anne.

Again, with the enormous increase in executive powers of the Cabinet the supremacy of Parliament is waning and Anson finds a real dualism in the constitution i.e., the Crown-in-Parliament and the Crown-in-Council.

Sec. 3. The Sources of the British Constitution.

According to Mr. Bryce the British Constitution means and includes (a) a mass of precedents carried in men's minds or recorded in writing, (b) dicta of lawyers and statesmen, (c) customs, usages, understanding and beliefs and (d) a number of statutes mixed up with customs and all covered with parasitic growth of legal decisions and habits. Prof. Munro gives a more concise statement of sources of the British constitution when he defines it as a composite of charters and statutes, of judicial decisions, of common law of precedents and usages and traditions." It is thus made of five elements:—

(i) *Charters*:—There are numerous charters such as the Magna Carta (1218), Petition of Rights (1628), Bill of Rights (1689), Act of Settlement (1701), Acts of Union with Scotland (1707) and with Ireland (1800). All these serve as great constitutional landmarks but cannot wholly represent the constitution of Great Britain.

(ii) *Statutes*:—There are important Statutes passed by the British Parliament and embodying some portion of the constitutional laws of the country. These include among others the Reform Acts 1832, 1867, 1884, 1918, 1928 and the Parliamentary Act of 1911, the Representation of the People Act of 1918 and the Equal Franchise Act of 1928.

(iii) *Judicial decisions*:—These decisions have made immense contribution to the growth of the British constitution by interpreting the Charters and Statutes and by determining according to the spirit of the existing laws the extent of individual liberty. Prof. Dicey emphasises this element of constitution by designating the English Constitution as a judge-made constitution."

(iv) *Common Law*:—The Common Laws of England represent a body of customary laws which do not owe their authority to any act of Parliament but which are nevertheless enforced by the courts. Many of the fundamental rights of citizens such as freedom of person and speech are founded upon these common laws and we cannot ignore their constitutional importance.

(v) *Conventions*:—These include the unwritten laws of conduct which though not enforced by the courts are obeyed as strictly as laws proper. The British constitution rests mainly upon these conventions. As Dicey says, any one who decides to know the British constitution must study the conventions as carefully as the positive rules of law."

Sec. 4. The Rule of Law: its effect upon individual liberty.

By the rule of law which, as we have already seen, characterizes the English constitution, we mean at least three distinct though kindred conceptions:—

(i) *Absence of an arbitrary power on the part of the government*:—The Executive cannot inflict punishment except for distinct breach of law established in an ordinary legal manner before the ordinary courts of law.

Absence of arbitrary power.

(ii) *The equality of all persons before the law*:—This implies that no man is above law and that every man whatever be his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of ordinary tribunals.

No man is above law.

(iii) *Absence of any administrative court*:—In England there is no provision for the trial of the executive officers by a separate tribunal. The offences committed by these officers are tried by the ordinary courts in accordance with the laws which regulate the conduct of citizens. There is one law and one court for the citizen and the public functionary alike.

Absence of administrative court.

The Rule of Law as enunciated above has been, as the English jurists tell us, the best guarantee of individual liberty. It implies that the rights of individuals are the source and not the consequence of the law of the constitution. It enables a private citizen who has been injured by an act of the Executive to bring a damage suit against the officers concerned and get his relief in an ordinary court of justice which is expected to decide the suit on merits. The position is different in France where the *Droit Administratif* has taken away the jurisdiction of ordinary court over officers and given them the proud privilege of "chartered

libertines." There are continental critics who prove the absurdity of the above remarks of Dicey by referring to the innumerable cases which have been decided against public officers and assert that Droit Administratif has always played successfully the role of a guardian of private rights. It is very difficult to say which of these two systems secures greater freedom. It is however true that Dicey's view of the Rule of Law and its effect upon individual liberty does not now represent the true state of things in England. In fact the rule does not hold good in these days of delegated legislations and we find many exceptions to the rule. The Executive can now make laws by orders in councils which are not reviewable by courts of justice and ministers have been empowered to settle the disputed points and arrive at a decision which is final. Again, we can hardly conceive of a rule of law which, as in England, makes the corporation liable for an act of its servants while the State itself denies responsibility for an act of the public servant. The public officials may also take shelter under the Public Authorities Protection Act of 1893 which imposes certain limitations with regard to suits against them and saddles the unsuccessful party with heavy costs. Again certain special immunities are enjoyed by the Judges and the Trade Unions for acts done by them; the Criminal Justice Act, 1925 which affords protection to certain officials point to the irresistible conclusion that there is no Rule of Law in the unqualified sense in which it was understood by Dicey. Another fact which is inconsistent with the conception of Rule of Law is that the servants of the Crown are denied any remedy even though they have been dismissed wrongfully.

Sec. 5. Merits of the English Constitution.

The English constitution has worked successfully for centuries. The flexible character of the constitution has facilitated the introduction of many reforms. This is the reason why in England revolutions have been few and far between and the British constitution has been a continuous growth. In order to ensure healthy growth of the constitution there was introduced the bicameral Legislature composed of two Houses, representing the Lords and the Commons. The constitution, again, is based upon a principle of co-operation. The Executive and the Legislative powers have been practically concentrated in the Cabinet which though unknown to law is the central wheel. The close relation between the three departments of government has contributed to harmonious working of the administrative machinery. The Executive which is responsible to the House of Commons can also bring about a dissolution

The circumstances favourable to the healthy growth of the constitution.

of the House of Commons. This system of checks and balances makes for ministerial stability and keeps the constitution going. Finally, in this constitution we find the best guarantee for individual rights. These rights are the source and not the consequence of the law of the constitution.

Sec. 6. Laws of the Constitution and Conventions of the Constitution : The nature of Conventions : the Sanction behind them.

The English constitutional law is made up of (a) laws proper and (b) conventions of the constitution. Laws of the constitution mean those laws which are enforced by the court. These laws may be either written laws or unwritten laws i.e., laws derived from the customs and traditions. The constitutional rule "that some person is responsible for the acts of the Crown" is an unwritten constitutional law, because this rule though unwritten will be enforced by the courts. The Conventions of the Constitution mean those understandings, habits, practices, usages or customs which are not enforceable by courts but which are nevertheless obeyed because they are, as experience shows, essential for the harmonious co-operation of the Crown, the House of Lords and the House of Commons wherein the Legislative and the Executive functions of the government are vested. Thus the maxim that a ministry must retire when it has lost the confidence of the House of Commons is a convention of the constitution.

Unlike the laws of the constitution the conventions go to constitute a moral code for the guidance of public men in the field of practical politics. Any deviation therefrom will go to make the action unconstitutional though not illegal. Hence no court of law can come forward to inflict any punishment on those who act unconstitutionally but not illegally. The justification of these conventions is to be found in the fact that they prescribe the mode in which the several members of the sovereign Legislative body—the King-in-Parliament—should exercise their discretionary authority for the harmonious working of the constitution. Thus the convention that the Cabinet when outvoted in the House of Commons on any vital question is bound in general to retire means nothing more than the assertion that the prerogative of the Crown to dismiss its servant must be exercised in accordance with the wishes of the House of Parliament.

We have already seen that any breach of the convention is not followed by punishment pronounced by a competent court of Justice. What is then the sanction behind these conventions? It is often argued that obedience to these rules is ultimately enforced by the fear of impeachment; but such process has now become

obsolete. The force of public opinion or the fear of public censure or disapprobation does not explain the obligatory character of the conventions because each of them when aided by a legal machinery fails to prevent breach of positive law. Dicey, however, suggests that the only sanction behind these conventions lies in the fact that breach of them will almost immediately bring the offender into conflict with the courts and the laws of the land. Dicey elucidates his explanation with reference to one important convention viz., the Parliament must assemble at least once a year and points out how without such annual summoning the Army Act which has an annual life will cease to operate to the detriment of public safety.

This view of Dicey cannot command unqualified support in view of the fact that there are certain conventional maxims the breach of which does not necessarily lead to breach of law. There are several other dominant motives which secure obedience to those conventions; these are (i) the desire to carry on the tradition of constitutional government, (ii) the wish to keep intricate machinery of government in working order and (iii) the anxiety to retain the confidence of the public and with it office and power.

Sec. 7. Distinction between the King and the Crown.

Briefly speaking King is a natural person with certain well-defined powers while the Crown is a bundle of sovereign powers,—prerogatives and rights—a legal idea. The distinction between the King and the Crown may be more effectively expressed by the saying, 'The King is dead; Long live the King.' This means, The King is dead. Long live the Crown which represents an impersonal organisation consisting of Parliament, ministers and the King. The Crown is an abstract idea associated with the government. According to Munro the Crown is a juristic person which never dies. Sir Sidney Low describes the Crown as a convenient working hypothesis. In recent times although the power of the King has decreased, the power of the Crown has substantially increased on account of the delegation of legislative power. The laws which emanate from the Crown are known as Orders-in-Council.

In ancient times the King was the real executive head and could do whatever he liked for the administration of the country. Those days are gone and the king of the present day enjoys no real power. Nevertheless the British constitution cannot dispense with the king-as-an-institution. It has deprived the king-as-a-person of the powers which he once enjoyed and transferred them to the Crown which means the king-as-an-institution. The king has thus been reduced to the position of a titular figure-head and the powers of the Crown are now exercised by the ministers who command the confidence of the Parliament.

Sec. 8. The King can do no wrong.

The maxim tells us that in the eye of law the king is perfectly irresponsible. No person can bring any suit against the king for any act done by him. As the king can do no wrong so he cannot authorize any wrong. The order of the king cannot, therefore be pleaded in defence of an illegal act committed by any officer of the Crown (Danby's case). What then is the remedy which a private citizen can claim when he has been injured by an act of the Crown. The rule of law which prevails in England cannot tolerate the idea that any wrong-doer should go unpunished. If the king is above law, somebody else must be responsible for his acts. Hence there is a constitutional convention which requires that every act of the Crown must be countersigned by a minister who is responsible for the consequences of the act.

Sec. 9. The King never dies.

The King is the symbol of unity and the office of the Crown cannot fall vacant. Although the person who wears the crown cannot avoid death, the king-as-an-institution exists for ever. The Crown is a juristic person and can continue its existence in spite of the demise of the king who is the physical representative of the Crown. As soon as the physical representative dies, the Crown at once passes on to the legal heir and thus preserves the unity of the State. Hence Blackstone says "Henry, Edward and George may die but the king survives."

Sec. 10. The character of Government. The various organs of Government.

The type of government which prevails in Great Britain is a mixture of monarchy, aristocracy and democracy. In it we find a constitutional monarch with limited powers and two houses of Parliament organised respectively on aristocratic and democratic principles. The House of Commons which is the democratic chamber wields overwhelming power and practically controls both legislation and administration. The institution of monarchy and the House of Lords have only nominal control over the House of Commons and hold their existence in order to check the democratic institution and to maintain the conservative tradition. Hence the Government of Great Britain may be more aptly designated as limited democracy or crowned Republic than as limited monarchy.

In England as in every other State there are three principal organs or departments of State, viz., the Legislature, the Executive and the Judiciary. The legislative department is under the control of the King-in-Parliament. A bill must pass through the House of Commons and the House of Lords and must receive the

Three
departments.

assent of the king before it can become a law. The Executive Head is the king and all acts are done in his name but in practice his powers are really exercised by the Cabinet. Every executive department has been placed under the charge of a minister who lays down the broad principles and leaves the details to the care of the permanent staff having expert knowledge. Originally the king was the final judge but with the growth of his judicial function his judicial powers have been delegated to the various courts of justice. His connection with the administration of justice lies in the appointment of judges. He is called the 'Fountain of Justice' but this title represents the position that he once occupied.

Sec. 11. The Powers of the Crown: Legal and actual.

In modern times the king has lost much of his former powers and it is said that the king of England reigns but does not govern.

The present position of the Crown. The king is now the titular head of the present system of administration; theoretically the Crown has supreme power in legislation inasmuch as every bill requires his assent. He can summon and prorogue the House of Parliament. He can dissolve the House of Commons before the expiry of its tenure of life. He can issue ordinances and proclamations but in practice he has very little power in legislation. He is never found to exercise his veto power and his other legislative powers have been usurped by the Cabinet which now controls legislation.

In these days of delegated legislation the legislative power of the Crown has increased substantially and the orders-in-council are found to supplement Acts of Parliament which generally lay down the broad lines of policy.

Turning to the executive department we find that the king has, theoretically speaking, wide executive powers. He can appoint and dismiss the highest public officers with a few exceptions. He has the power of pardon. The expenditure of public money requires his sanction and he grants charter of incorporation. He can create peers and confer honorary titles upon persons for the services which they have rendered. He has command over the Army and Navy and the Air Forces. In practice, however, the Cabinet exercises the actual executive powers. The ministers carry out all the executive functions in the name of the Crown and are responsible for all those acts.

In the judicial department the king has lost his real power. Theoretically he is the fountain of justice but in practice he has ceased to perform any judicial function. The judges perform the judicial functions and the Parliament lays down the law

The Judicial power.

and the procedure. The king, however, exercises the prerogative of mercy through the Home Secretary.

He cannot create new courts nor can he alter jurisdiction of the existing courts. The final appeals from the Dominions, Colonies and India are preferred to him and are heard by the Judicial Committee of Privy Council which advises him to deliver judgment in a particular way. The Crown regulates the foreign relation, appoints, sends, and receives ambassadors. He can declare war and make treaties but before ratifying any treaty which involves the payment of money or the cession of territory he has to submit the same to the Parliament for approval. Again, no military expenditure can be incurred unless the House of Commons has voted the amount of money necessary for the purpose.

The Crown still retains considerable control over the crown colonies and dependencies of Great Britain. He is the constitutional monarch having the veto-power over legislation. The administration is carried on in the name of His Most Excellent Majesty by his representatives usually known as Viceroys and Governors. With regard to the Dominions these powers of the Crown have been considerably reduced by the Statute of Westminster (1931) but the person of the King remains the main link which connects Great Britain with the Dominions.

The Crown is the head of the Established Church of England and is the final authority in matters relating to ecclesiastical discipline. The archbishops, and bishops are appointed by him and his consent is required to give validity to any measure which the national assembly of the church may be pleased to pass.

The king of England enjoys certain prerogatives which mean and include the residue of discretionary and arbitrary authority which is legally left in his hands. The king is free from political responsibility. He cannot be arrested because he can do no wrong. He is not accountable to any court for anything done by him. He has the right to be consulted, right to encourage and right to warn. With the exception of purely personal prerogatives all other prerogatives have now become the privileges of the people inasmuch as these prerogatives are now exercised by the Cabinet which is responsible to the popular House.

Sec. 12. The Kingship—a hereditary institution.

Like all monarchical States Great Britain has a hereditary monarch whose crown passes according to the rules of succession embodied in the Act of Settlement of 1701. According to this

Act which still regulates the succession to the throne of England the crown is to descend to Electress Sophia and heirs of her body being protestants. Each monarch has to make declaration that he is a faithful Protestant in order to make himself eligible to succession. He must also belong to the church of England of which he will be the head.

Succession to the throne is governed by the rule of primogeniture according to which the eldest son and his heirs exclude the other heirs. If the eldest son dies without any issue the crown passes to the second son and his heirs. When the king is under eighteen years or is of unsound mind or is otherwise incapable of discharging his duties, the Parliament has to establish a regency. There is however no hard and fast rule regarding the personnel of the regency.

Any change in succession can be effected by an Act of the Parliament which according to the Statute of Westminster, 1931 must bear the assent of the Dominions. Such a change was effected by the Declaration of the Abdication Act, 1936 by which King Edward VIII was deprived of the throne by reason of his morganatic marriage.

The King bears a high-sounding title which runs thus :— George VI the king by the Grace of God of Great Britain, Ireland, British Dominions beyond the Seas, King, Defender of Faith.

Sec. 12(a). The utility of English Monarchy.

Although the English monarchs have lost their former position, the utility of English monarchy can never be exaggerated.

The king is the pivot of administration.

In the first place the king is the pivot on which the whole machinery of administration turns. He appoints the prime minister and asks him to form his Cabinet. The ministers perform all acts in the name of the king. In the second place, the king wears the crown as long as he lives and can help his ministers with his experience and sound advice. The king has been found to interfere whenever the political atmosphere becomes very cloudy and save the country from a serious national calamity by playing the role of a mediator. In the third place his relation with foreign monarchs facilitates the making of treaties with foreign States and secures the continuity of foreign policy. In the fourth place the king seldom refuses to give effect to the will of people as expressed by the Parliament and for this reason he now enjoys popularity which has highly beneficial effects upon the State. The institution of kingship is thus not hostile to the growth of democracy in England. In the fifth place the king is the symbol of unity. The citizens of dependencies owe their allegiance to the British king in the same sense as the citizens of Great Britain and this allegiance to the same monarch creates a bond of union. The abolition of

kingship will mean a dissolution of the Empire. In the sixth place the British Commonwealth cannot conveniently be turned into a Republic with an elected President at the helm because all the members of the Commonwealth will demand participation in the election of the President and if such an institution is conceded England will surely lose her position and prestige. Finally, the king occupies a high position in society and his presence adds a moral tone to the social life.

Sec. 13. Origin and development of English Parliament : its present position.

The modern Parliament has a long history behind it. During the Anglo-Saxon period there was *Witenagemot* or the council of wise men. This consisted of the king's nominees and met at irregular intervals. It had the power of electing and deposing the king. In the Norman period this council of wise men was substituted by the *commune concilium* which was a feudal assembly of the tenants-in-chief, the bishops and the archbishops. This was not a truly representative body. The idea of representation came for the first time in Montfort's Parliament of 1265 in which the barons, clergy and four knights from each shire, two citizens from each city and two burgesses from each borough were represented. Next came the Model Parliament of Edward I in which the representatives of the three estates or classes—the clergy, the baronage and the commons—had seats. By the middle of the fourteenth century the Parliament was divided into two houses. The greater clergy and the greater barons formed the House of Lords and the lesser clergy, the knights and the citizens formed the House of Commons.

During the Tudor and Stuart period the Parliament had to struggle hard with the absolute monarchs who always tried to curtail its powers. The result of this struggle was the revolution of 1688 which established the authority of the Parliament against the Crown. At first the House of Lords controlled legislation but with the introduction of the Cabinet system during the reign of William III the House of Commons became more powerful than the House of Lords.

The composition of either house did not remain unchanged.

At first only the lords spiritual and lords temporal who received writs could attend the House of Lords, but in course of time it became a recognised principle that a lord once summoned was always summoned and that on the death of a lord his son would automatically step in the shoes of his father.

The House of Commons became a truly representative chamber with the gradual extension of suffrage by the Reforms Act of 1832 and the Equal Franchise Act of 1928. This popular chamber has been ensured a long and regular session by the Septennial Act of 1716 and owes its present position to the Parliament Act of 1911 which deprived the House of Lords of its real powers and established the legislative supremacy of the House of Commons.

The post-war period has witnessed a decline in the powers of the Parliament. The Parliament has lost its pre-eminent position and has yielded to the dictatorship of Cabinet which practically rules the country. The Parliament has now to legislate under the vigilant eye of the Electorate. Again, excessive pressure of business is responsible for the passing of ill-considered legislations and the delegation of legislative powers to the various departments of Government. The Parliament has ceased to be the only source of laws and Orders-in-council have often taken the place of Parliamentary statute.

Sec. 14. The Extension of Suffrage : the method of Election.

In ancient England common people had no right to send their representatives to the Great Council. In the Saxon period the magnates of the realm were represented in the Witen which was the only Parliament allowed by the Saxon King. The Norman Concilium consisted of the great men summoned by the king. The Magna Carta of 1215 extended suffrage to freemen only. In 1265 Simon de Montfort admitted in his Parliament four knights selected by the county court and two representatives from each of the 21 English boroughs chosen by all the freemen. This proud privilege of the freemen was restricted by an Act of 1429 which recognised the right of franchise of all freemen who held freehold land with a rental value of 40s. a year. Between the fifteenth and the nineteenth centuries the suffrage was restricted by the autocrats who wanted to control the House of Commons. The nineteenth century witnessed a series of acts which purported to extend suffrage. The first Act of this kind was the Reform Act of 1832 which extended suffrage to ten pounds rate-paying occupants of the towns. This was followed by an Act of 1867 which enfranchised the ten pounds lodgers. Next important enactment was the Act of 1888 which extended suffrage and provided for re-distribution of seats. This was followed by the Representation of People Act of 1918 which conferred the right of franchise upon every woman of over thirty years of

age who was either an occupant of property of an annual value of £5 or the wife of such an occupant. The Act however did not place men and women on the same footing inasmuch as it allowed every male British subject of 21 years of age who had lived in a constituency for three months before the preparation of voter's list to vote in a Parliamentary election. The discrimination between males and females gave rise to fresh agitation which ultimately led to the passing of the Equal Franchise Act of 1928. This Act placed men and women on the same footing in respect of the right of franchise ; under this Act a person whether male or female not subject to any legal incapacity is entitled to be registered as voter for a constituency other than university constituency if he or she has attained the age of twenty-one, possesses either the requisite residence or business premises qualification or happens to be the husband or wife of a person who possesses the requisite business premises qualification ; when a person has both the residence and business premises qualification he will have two votes but will not be entitled to cast two votes in the same constituency.

Extension of
suffrage.

The possessor of university degree may have an additional vote which he can use in choosing the representative of his university. Freemen of the city of London who were liverymen of city company would be registered in a separate register. A person having four votes—a residence vote, a business vote, London livery vote and university vote—is not allowed to cast more than two votes one of which must be a residence vote.

As a result of the passing of numerous statutes which we have enumerated above, a universal adult suffrage has been introduced in England. Certain persons such as minors, idiots, aliens, paupers maintained by the public institution, peers and criminals are not entitled to vote.

The Parliamentary election generally takes place once in five years unless the House of Commons is dissolved earlier. The date of polling is the same in all constituencies. Each voter is given, when he enters the polling station, a ballot paper containing the name, address and occupation of each candidate ; he is to put a cross mark against the name of the candidate he chooses and to drop the ballot paper in the ballot box. The absent voters are allowed to mail their ballot papers in advance to the returning officers.

The candidates are to file nomination papers signed by ten voters of their constituency to the returning officer and have also to deposit £150. The deposit is forfeited if the candidate fails to secure $\frac{1}{10}$ th of the total votes. The candidate getting a bare majority is declared elected. Under the alternative voting each voter would record his first choice and second choice so that if his

first choice was third in the count his second choice would be counted. The candidate receiving the lowest number of votes would be made to drop out while his votes would be distributed among the candidates who stand first and second respectively in the election.

✓Sec. 15. The House of Commons : how it is Constituted.

The House of Commons is composed of representatives of counties, boroughs and universities. With the extension of franchise by the Representation of the People Act, 1918, and the Equal Franchise Act of 1928 England has at present more or less universal suffrage for men and women. This extension of franchise has increased the number of voters and has at the same time complicated the problem of election. The basis of representation in Great Britain is one representative for every 70,000 of population and one for every 40,000 in Ireland. Formerly, the number of members was 707 but with the establishment of a separate Parliament in Ireland the total membership is 615 including 13 members from Northern Ireland. The extension of suffrage has brought about a revolution in the composition of the House of Commons. Formerly, the House of Commons was only an aristocratic chamber and did not represent the masses. Now it has come to include men of moderate means who earn their bread by individual efforts and represent various interests of the State.

The extension of Franchise by the Act of 1918.

A member of the House of Commons cannot tender his resignation in a direct manner. He can do so only by accepting an office under the Crown. Hence, when a member intends to vacate his seat in the House of Commons he usually applies for the Stewardship of the chiltern hundreds. As soon as his appointment is gazetted, his seat in the house falls vacant and a writ of bye-election is issued for the election of a new member.

Sec. 16. The Members of the House of Commons : their Qualifications.

No person can aspire to become a member of the House of Commons unless he is 21 years of age. Peers of England and Scotland are excluded but non-representative Irish Peers are eligible. Ministers of the Church of England, the Church of Scotland and the Roman Catholic Church are not eligible for membership. A similar disqualification is found in the case of returning officers, sheriffs and Government contractors. These are excluded on the ground of public policy. Aliens, bankrupts, idiots, felons and lunatics cannot become candidates for election

Certain persons are excluded.

because they are not qualified to vote. Persons guilty of corrupt practices, holders of certain offices or places of profit from or under the Crown cannot claim this proud privilege. The members of the House of Commons are paid an allowance of £600 per annum. The House of Commons Members' Fund Act, 1939 established a fund for granting pensions to former members of the House of Commons and their widows or orphans. The members of the House of Commons enjoy the privilege of free travel between London and other constituencies.

Sec. 17. The Duration of the House of Commons.

Before the passing of the Parliament Act 1911 the duration of the Parliament was seven years but the Parliament Act reduced the duration to five years. The Crown may however dissolve the House of Commons before the expiry of five years if the Prime Minister who has no majority in the House of Commons wants to see his support in the new House of Commons. Again, the Parliament has, as legislative sovereign, power to extend its duration during times of war when quarrels of election would endanger the safety of the State.

Parliament
has reduced
the term to
five years.

Sec. 18. The Organisation of the House.

The House of Commons as well as the House of Lords are situated in Westminster, London. Both Houses are summoned and dissolved and its sessions can be opened and closed by the Crown alone. Prorogation which terminates all unfinished business is made by the House itself. Adjournment means the end of a meeting while the prorogation means the end of a session. The Parliament must meet at least once a year and its annual session which in former times used to extend from the middle of February to about the middle of August now covers a longer period of time. The quorum of the House is forty and sitting adjourns if there is no quorum.

The Speaker of
the House.

The first important task of the members of the House of Commons is the selection of the Speaker. Prime Minister usually selects the Speaker in consultation with the party-leaders. This nomination is formally proposed and seconded by the private members in order to keep up the show of popular election.

The Speaker
and other
officers.

When they have elected the Speaker, the election gets the approval of the Crown through the Lord Chancellor. The privileges of the members are affirmed and oaths are administered. After the king's speech the real business of the House commences. The principal officers of the House are the Speaker, the Chairman and

the Deputy Chairman of Ways and Means, the counsel to Mr. Speaker, Sergeant-at-Arms, the Chief Whip and Chaplain. For the conduct of business the Houses are divided into committees viz., (1) A Committee of the whole, (2) Select Committees of Public Bills, (3) Sessional Committees, (4) Standing Committees on Public Bills and (5) Committees on Private Bills. The Committee of the whole House is known as the Committee of Ways and Means when its object is to provide for revenue and it is called a Committee of Supply when it deals with heads of expenditure. The Committee of the whole is simply the House of Commons itself and is presided over by the Chairman of Committees. The Select Committee which usually consists of fifteen members appointed by the Committee of selection has to deal with particular subjects referred to it. The Standing Committee means a committee which consists of members nominated by the Committee of selection. The Committee on private bills means a committee appointed to consider private bills and consists of four members and a referee as chairman. Joint Select Committees consisting of an equal number of members from each House concern themselves chiefly with private bills.

✓ **Sec. 18(a). The Speaker : his Position in the House of Commons.**

The most important of the officers in the House of Commons is the Speaker. He is selected from among the members of the party-in-power and is to hold his office during the duration of the Parliament but it has now been the practice to re-elect him so long as he is willing to serve. As soon as he is elected he keeps himself aloof from party politics and for this reason he can be conveniently re-elected, when a new party commands majority in the House.

The privileges of the speaker.

He alone has the right to speak on behalf of the House of Commons before the king. He demands from the Crown the privileges of the House. He is the presiding officer and interprets the rules and procedure of the House. He alone can decide whether a particular bill is a money bill or not. He has to certify whether the special procedure laid down in the Parliament Act of 1911 should be observed ; he is the chairman of the house ; he decides points of order and can stop any speech when it becomes irrelevant. He has the right of disallowing questions and can even ask the offending members to withdraw from the House. He reprimands members who are guilty of disorder and signs warrants for contempt. He also signs warrants for by-election writs. He votes only on the occasion of a tie when he has to exercise his casting vote. On the matters of disputes his decision is final and no appeal lies from that decision. When amendments tabled are numerous he can adopt the method known

as the Kangaroo closure with a view to selecting the more important amendments for debate and vote. He is paid £5,000 per annum and is given an official house. He has been given precedence next after the Lord President of the Council. On the floor of the House the Speaker's right is occupied by the majority and the left by the minority.

✓ Sec. 19. The Powers of the House of Commons.

The House of Commons is the representative chamber and for that reason has been given wide powers of legislation by the Parliamentary Act of 1911. This act has taken away the legislative powers of the House of Lords in regard to money bills and has vested this power in the House of Commons. Under the provision of this act if a money bill has been sent to the House of Lords at least one month before the end of the session and is not passed by the House within one month; the House of Commons, if it so desires, can present the bill to the Crown for assent and it becomes an act as soon as it receives the royal assent. In regard to other public bills the House of Commons has also considerable power. If such a bill has been passed by the House of Commons in three successive sessions and has been sent up to House of Lords at least one month before the end of each session but has been rejected by the House of Lords in each of these sessions, then the bill may, on receiving royal assent, become an act provided that two years have elapsed between the date of the second reading in the House of Commons in the first session and the date on which it passes the House of Commons in the third session. In recent times a bill has been passed by the House of Commons for reducing the period of Suspension from two years to one year. This bill has been rejected by the House of Lords.

The House of Commons has also considerable financial and administrative powers. In exercise of its financial powers the House of Commons controls the taxation and expenditure of revenue of the State. The members of the House of Commons have right to interfere in the affairs of administration and can criticise the conduct of the government freely. They can call attention to executive blunders and demand the redress of public grievances. Any member can ask questions to the ministry and when dissatisfied with the answer may move an adjournment. He may also notify his intention to call attention to certain grievances and move a resolution. The House, again can refuse to supply funds required by the departments. The house contains men of ability who practically rule the whole of British Empire.

Sec. 20. Public Bills, Money Bills, and Private Bills : Procedure of introducing bills.

A public bill means a bill which contains certain legislative proposals affecting the general interest of the whole people or of a major portion of them ; when such a bill is introduced by a minister it is known as the Government bill. If a private member introduces such a bill it is known as a private member's bill. A money bill is a public bill which relates to the supply and expenditure of money. A private bill contains proposals relating to the interest of one particular locality or corporation, municipality or other particular person or body of persons.

There are methods of introducing bills. First, a motion may be made for leave to introduce a bill and this is accompanied by a speech explaining the object and followed by a debate and vote. This method is now applicable to the introduction of important public bills only. Secondly, a bill may be introduced by a motion made at the commencement of the public business and after a brief explanatory statement by the mover and one opponent, the Speaker of the House may put the question. When a bill has been introduced in either of the above ways, the question that the bill may be read for the first time is voted upon without any amendment.

Since 1902 another method is adopted. It authorises a member to present at once a bill which is then read for the first time without requiring any vote of the House.

After the first reading, comes the second reading when the bill is discussed on general principles.

After the second reading, the bill is sent either to the Committee of the whole or to the Standing Committee. In exceptional cases public bills are referred to Select Committee in which case the bill is sent to such Select Committee before it goes to the Committee of the whole or to the Standing Committee. This time the bill is discussed in details and amendments may be moved. In case of any amendment the Committee considers whether the amendment can be supported or not.

If the bill is supported from the committee of the whole without any amendment, the bill becomes at once ready for the third reading, but when the bill is reported back with amendments the bill as reported again enters into consideration of the House and further amendments may be made by the House.

Next comes the final stage of a bill when it is read for the third time and is put to the vote of the House. If it is passed by the House of Commons it is sent to the House of Lords for sanction. When this second House approves the bill it becomes an act with the Royal assent. If the House of Lords makes certain amendments, the bill with amendments is sent back to the lower house for reconsideration. If the lower house does not approve the amendments and no agreement is reached with the House of Lords the bill stands rejected in the upper house.

Since the passing of the veto bill, a public bill may become an act with the royal assent even if the bill is not supported by the House of Lords provided the bill has been passed by the House of Commons in three successive sessions and two years have elapsed between the second reading in the first session and the date when it is passed by the House in the third session.

In case of money bills the House of Commons has the supreme power. These bills, however, can be introduced only on the recommendation of the king expressed through his ministers. The House cannot deal with money bills except in the Committee of the whole House presided over by the Chairman of the Committee. There are two committees viz., (i) Committee of Supply and (ii) the Committee of

Ways and Means. The former considers the estimates for expenditure of the ensuing year and votes the requisite grants of money. The discussions on these estimates are limited to 20 or 23 days. On the expiry of this allotted time the demands for grants are put to vote and carried without any objection and debate. The Committee of Ways and Means before which the Chancellor of the Exchequer has to place its budget before the end of the financial year passes resolutions to the effect that sums of money already voted do issue out of the Consolidated fund and that if the fund is not sufficient taxes be imposed. These resolutions are then embodied in bills and the bills thus framed have to pass through the usual stages like other public bills with this peculiarity that the bill after it has been passed by the House of Commons is to be placed before the House of Lords at least one month before the end of the session and shall become an act with the Royal assent notwithstanding that the bill has not been assented to by the House of Lords.

In every year two Acts—the Appropriation Act and the Finance Act—are passed. The Appropriation Act determines what sums are to be paid out of the Consolidated fund and the Finance Act contains resolution in regard to taxation. It should be remembered in this connection that there are certain expendi-

tures e.g., king's Civil List, salaries of judges which are authorised by permanent statutes. Similarly there are certain taxes e.g., Death duties, customs which are imposed by permanent statutes. These expenditures and taxation do not find place respectively in the Appropriation and Finance Acts. The procedure for passing such Act is very complex. Estimates submitted by the various departments are discussed vote by vote. All these votes find place in the Appropriation Act which specifies the amount which each department is entitled to spend in a year. The passage of the Act takes time and is not complete before the end of August. The department cannot starve for so long a period. Hence the Committee of Supply authorises the treasury to advance a limited amount under every vote. The resolutions of the committee to this effect are embodied in 'votes on Account' in the early part of March every year. This is then followed by appropriate resolutions of the Committee of Ways and Means which give authority for the issue of the sums from the Consolidated fund. Money raised under the Finance Act and other permanent statutes is deposited in the Exchequer Account of the Bank of England known as the Consolidated fund out of which payment is made under the strict supervision of the Comptroller and Auditor-General. Sometimes money may be immediately needed to meet extraordinary emergencies. The Government then has to approach the House of Commons for a lump sum on vote known as the Vote of Credit. A special Bill containing the vote of credit is passed by the House of Commons. According to the Parliamentary Act of 1911 the House of Lords can neither reject nor delay a money bill.

In regard to private bills the procedure is somewhat complicated. Before such a bill is introduced a petition is to be drawn up and a notice is to be served upon the interested parties in order that they may file objections. A petition and a copy of the bill is to be submitted to the Private Bill Office and to the Treasury.

The procedure in case of private bills.

The petitioner is required to file estimates of cost and to deposit certain sums for compensating those who may be affected by the commencement or failure of the work. There are examiners of petitions for private bills to examine whether all the above rules have been followed. When this has been done, it is ascertained into which House the Bill should be introduced. Then the bill is read for the first and for the second time. The bill, if passed, is then referred to the Private Bill Committee. If the bill finds no opposition, the bill then goes to the Committee on unopposed Bills where the Bill is examined clause by clause. After the Committee has submitted its report, the bill has to follow the usual procedure like public bills. If the bill finds opposition, the bill is sent to the Private Bill Committee where the matter is heard for judicial determination in the presence of parties

and their barristers. The Committee has also got to consider the reports submitted by the various departments of Government when the bill touches their interest. The Committee submits its report to the House to which the bill belongs and then the bill has to follow usual procedure like public bills.

Sec. 21. Merits and Defects of Private Bill Legislation: The present system of Provisional order.

Private Bill Legislation in England has to follow a route which has been well designed to ensure careful consideration in a non-partisan spirit. Notice of the petition is duly given in the Gazette and Newspaper so that any person likely to be affected by the proposed bill may come forward to file objection. The judicial process by which the objections are heard cannot but command support. The Legislature also has not to waste much of its valuable time in view of the fact that the vexed questions relating to the bill are determined by the Private Bill Committee whose report determines the fate of the bill. In spite of these merits the procedure is rather too costly. Fees are to be deposited and huge expenses have to be incurred in engaging the best barristers and solicitors and in summoning witnesses. Again, private bills do not always safeguard public interest. For these various reasons introduction of private bills has been discouraged and administrative departments have now been authorised to issue orders in response to local requirements. These orders may become effective either with or without Parliamentary sanction. In the former case the orders are known as Provisional Orders. When any person or company is desirous of having such a provisional order, a petition in that behalf has to be made to the department concerned. The department then determines the necessity or utility of such order after hearing opposition if any. If its decision is in favour of allowing the petition, it issues the order. The Ministry then combines a number of such provisional orders in a Bill known as the Confirmation Bill. As the Bill is introduced by a minister the process becomes easier and less expensive. Nevertheless the Bill after second Reading is referred to the Appropriate Committee on Private Bills where the interested parties may represent their submission with the help of barristers.

Sec. 22. Closure and Guillotine.

When the discussion becomes irrelevant and unusually long, the discussion may be cut off by Closure which is the usual and common method of cutting off debates. It operates only when at least one hundred members are present and one of the members stands up and moves the motion "the question be now put". The motion is then, unless the Speaker directs otherwise, voted without any amendment or debate. When a bill is discussed clause by

clause and takes away much of the valuable time of the House some member may move that such clause "stand part of the bill." If the Speaker agrees to the proposal, the motion is at once put to vote without any debate. This is what is known as "Closure by Compartment." There is still another more drastic method. This fixes the time which may be devoted to the discussion of a bill. As soon as the time expires the bill is at once put to vote. This method is known as Guillotine.

When the debate is at an end, the speaker asks the members to signify their wishes. This is followed by the members uttering Ayes or Noes in chorus. As the Speaker is unable to decide the result, he asks the members to run to the separate lobbies so that the tellers may count the Ayes and Noes.

Sec. 23. Privileges of the members of the House of Commons.

We have already dealt with the legislative and financial privileges of the House of Commons. There are certain other privileges which the members of the House of Commons enjoy and which are formally granted on them at the request of the Speaker. These include (1) Freedom from arrest during continuance of the session and for a period of forty days before and after it, except in the case of treason, felony, breach of peace, sedition, libel and criminal contempt of court; (2) Freedom of speech within the House; (3) Freedom of access to the Crown which can be enjoyed by the members collectively; (3) Right to regulate the constitution, to fill up vacancies and to take notice of legal disqualification of members; (4) Right to regulate its own proceedings; (5) Right to exclude strangers; (6) Right to prohibit publication of debates; (6a) Right to authorise publication of its proceedings (*Stockdale vs. Honsard*); (7) Right to commit for contempt for breach of its privileges; and (8) Right to demand a favourable construction of its proceedings. (9) Another important privilege is the right of impeachment; but the exercise of this right is now absolute; (10) Another right of the House of Commons is the solemn right to control finance and initiate financial legislation.

There is one more privilege which entitles a member to get £600 every year as his remuneration over and above the travelling allowances.

Sec. 24. Political Parties : their Organisations : their Aims.

The democratic organisation depends for its success on the growth of political parties. Hence we find in Great Britain a number of political parties. Until 1924 there were practically two parties—The Conservatives and the Liberals—and the rein of administration usually lay in the hands of the party that could com-

mand majority in the House of Commons. This two-party system worked smoothly in England until 1924 when the Labour party came for the first time to sit in the Treasury Bench and added complexity to the system of administration. Since the rise of the Labour party Great Britain has been painfully experiencing the dilemma of three parties none of which possesses absolute majority in the House of Commons. The evils of minority Government manifested themselves in clear terms and at last the crisis of 1931 ended with the formation of National Government. With the recent decline of the Liberal party the Labour party now claims absolute majority in the House of Commons and has assumed charge of the administration.

Let us now have a brief review of the three political parties in England and their aims and organisations.

(1) The Conservative party which owes its descent to the Tory party enlists the support of persons of high rank as well as those belonging to the established church. This party stands for maintaining the existing order of society and shows an Imperialistic bias. The members of this party are protectionists and took a leading part in the Ottawa Conference of 1932 which enunciated a novel scheme of Imperial Preference with a view to strengthening the economic position of the British Empire.

(2) The Liberals who may be regarded as successors to the Whig party owe their strength to the support of the middle class and stand firmly for reform. Originally they were ardent followers of the Laissez Faire policy but ultimately they lost their confidence in the policy and urged the necessity of state interference for the cause of industrial population. They still show a bias for free trade. In recent times this party has been split up into three groups one of which has been an active supporter of free trade. We thus find that the two parties—the Conservatives and the Liberals do not differ fundamentally in their aims and aspirations.

(3) The Labour party has a programme which is fundamentally different from those of the other two parties. It shows clearly a Socialistic bias and stands for the nationalisation of instruments of production with a view to ultimate establishment of a Socialist State. It has already nationalised the Bank of England, the coal mines, and certain means of communication including wireless and aviation. Its foreign policy aims at maintaining peaceful relation with Russia and U. S. A. through the instrumentality of the United Nations Organisation. It is pioneering the independence movement and has already introduced constitutional Freedom in India. It emphasizes in strong terms the evils of inequality and urges the necessity of imposing surtax and capital levy. At present the Labour party claims an overwhelming majority in the House of Commons and has formed government under a Labour Premier.

There are two more minor parties in Great Britain. The Independent Labour party consists of radical labourites who press for immediate introduction of a true Socialist State in England. There is also a Communist party which demands abolition of Capitalist rule and establishment of Communist society.

Each party has its own organisation. Each party maintains a central office in London. This central office controls the organisation of the party and co-ordinates the activities of the various local associations. Each party has its own literature and launches a literary campaign with a view to strengthening its positions. The local associations are affiliated with the National organisation. The primary aim of each party is to set up candidates with a view to capturing seats in the House of Commons.

Sec. 25. The Composition of the House of Lords.

The House of Lords is composed of (1) hereditary peers including those of England created before 1707, those of Great Britain created before 1801 and those of the United Kingdom created thereafter, (2) representative Scottish Peers, sixteen in number who are elected for each Parliament and representative Irish peers who are elected for life. The number of Irish peers was originally 28 but vacancies on account of death are no longer filled up by new representatives. (3) 26 Lords Spiritual (two archbishops and twenty-four bishops) and 7 Lords of Appeal in ordinary who are appointed by the Crown and receive a salary of £6000 per annum. The members must be at least twenty-one years of age and must not be aliens, felons or bankrupts or persons under sentence for grave offences. Women whether they claim peerage by inheritance or grant are not allowed to sit in the House of Lords. There are as many as 785 members in the House of Lords including Lord Sinha of Raipur who is the only Indian peer. The tenure of every Lord is not the same. There are some Lords e.g., Bishops who hold their seats during tenure of office, there are Lords of Appeal, who hold seats for life and the rest are hereditary peers. All these peers do not usually attend the House, the normal attendance in the House being about thirty-five.

Sec. 26. The Office of the House of Lords : the Organisation of the House.

The most important officer is the Lord Chancellor who is the Ex-officio president of the House. He is the speaker of the House and is appointed by the King on the advice of the Premier. He enjoys the right of putting motions before the House. He has no casting vote and gets a salary of £4000 a year. There are a few other officers who hold important posts in the House. These include the clerk of Parliament, the Lord Chairman of committees, the counsel to the Lord Chairman of committees, the

Sergeant-at-Arms, the Librarian and the Gentleman Usher of the Blackrod. The Lord Chairman of the Committees presides in the Committee of the whole to which bills are generally referred. The Gentleman Usher of the Blackrod has to keep in custody all persons detained for trial by the Lords.

The business of the House is conducted in a leisurely way and every member is given free scope for discussing matters. The Lord Chancellor will never interrupt him nor there is any use of closure to cut off debate. Any question asked to a minister may be a general debate when the notice of the question appears in the orders of the day. Presence of three members is required to form a quorum but no bill can be passed unless there are at least 30 members. The sessions of the House of Lords are generally coincident with those of the House of Commons.

Sec. 27. The Powers of the House of Lords.

The House of Lords does not meet so frequently nor does it sit so long as the House of Commons. It has two important functions :—(i) Legislative and (ii) Judicial. In legislation the

The House of Lords has two functions: the legislative and the judicial.

House of Lords exercised considerable powers till the passing of the Parliament Act 1911. It had co-ordinate powers with the House of Commons. The Parliament Act, 1911 has taken away many of its powers. Although theoretically the House of Lords can originate bills but in practice, all important bills are introduced in the House of Commons. With regard to money bills the House of Lords has practically no voice. It cannot initiate nor amend money bills. If a money bill which has been passed by the House of Commons and sent to the House of Lords at least one month before the end of the session is rejected by the House of Lords, it becomes an act with the assent of the king. In regard to public bills other than money bills the House of Lords has only a suspensive veto. Such bills can become laws if the House of Commons has passed them in three successive sessions and the House of Lords has rejected them in each of these sessions provided two years have elapsed between the date of the second reading in the first of these sessions and the date when it is passed in the third of these sessions.

All Bills after the second reading are debated in the Committee of the whole House before being read for the third time. There are sessional and select committees, a standing committee for textual revision to which every bill after passing through the whole is referred unless the House otherwise directs.

The House of Lords has certain judicial functions. These functions are exercised by the Lord Chancellor and the Law-lords who are created peers for this judicial purpose. The House has

original jurisdiction to try peers charged with treason or felony and also to try impeachment brought by the House of Commons. The privilege of a lord of being tried by the peers in the House of Lords in case of felony has been taken away by an Act of 1936. The House is the supreme court of Appeal in Great Britain and Ireland excepting the Irish Free State. This judicial function is exercised by the Lord Chancellor and seven Law Lords assisted by other Lords who hold high judicial post.

Sec. 28. The Importance of the House of Lords.

Although the Parliamentary Act of 1911 has minimised the importance of the House of Lords in the sphere of Legislation, we cannot call it a useless body. It is indeed true that as an upper house it is not as powerful as the upper chamber in U. S. A. or in France. The principle of heredity again, is inconsistent with the democratic ideas of the time. Nevertheless the Englishmen cannot safely dispense with this house, representative as it is of the various important interests, experience, knowledge and aristocracy of Great Britain. The public opinion in Great Britain is undoubtedly in favour of the continuance of this old and time-honoured institution for the following reasons :—

(a) It consists of eminent politicians who can devote their time and experience to the consideration and revision of bills passed by the lower house.

(b) It can postpone the passing of bills for at least two years and this long time may reveal the defects, if any, in the proposed bill and control the gust of passion which led to its origin.

Again, an act extending the life of the Parliament can not be passed under the provisions of the Act of 1911 without the consent of the Lords.

(c) Bills of non-controversial nature may be initiated in the Upper House.

(d) The House of Lords is a reservoir of cabinet ministers. The important cabinet ministers and more particularly the ministers for foreign affairs are selected from the House.

(e) It is also the House where broad questions of State policies are discussed.

(f) It serves as a check upon the ultra-radicalism of the lower house.

Sec. 29. Attacks on the House of Lords. Should the House be reconstituted ?

With the exception of a small number of law-peers the House of Lords is constituted on purely hereditary basis. This principle

of heredity has been attacked on the ground that it cannot always ensure the presence of men of superior talents in the House. Again, as ancient peerage was a distinction attached to the tenure, the existing Lords belong mainly to the landed aristocracy. In recent times the practice of conferring peerage on persons who have acquired wealth or eminence by virtue of their contributions to Literature, Arts, Science, Trade, Industry has not changed the character of the House. The House remains as it was in the past "the common fortress of wealth" and bears a conservative temperament unmoved by the recent trends in Political thought. The House again has become unwieldy by reason of the fact that if a man is once summoned to the House of Lords his heir has an inherent right to be so summoned after his death. If we attempt to find room in it for adequate representation of the Labour party we will surely make its composition numerically ludicrous.

The above faults of the House of Lords, make a clear case for reforms. The possible lines for reforms were thought out by the Bryce Conference as early as 1917. The plan recommended by Lord Bryce contained proposal for reducing the number of members to 327. Three-fourths of the members were to be elected for a term of twelve years by the House of Commons by secret ballot and proportional representation and the remaining members were to be elected from the whole body of peers by a joint standing committee of the two Houses. This scheme is at once fantastic and combines all the worst feature of all existing second chambers. Another scheme suggested by Lord Salisbury in 1932 proposed to form a second Chamber with three hundred members half of whom were to be elected for twelve years by the hereditary peers and the other half to be nominated by the Government. The labour party made certain proposals in regard to the re-constitution of the House of Lords in 1934. According to their proposals the House of Lords should consist of 100 members elected by each newly elected House of Commons in proportion to the numerical strength of each party in the House of Commons. All these proposals failed to command support of Legislature and as yet no reform has been introduced in the House of Lords.

Sec. 30. The Privileges of the House of Lords.

The members of the House of Lords have the following privileges :—(1) Freedom of speech; (2) Freedom from arrest except in cases of treason, felony and breach of peace; (3) Individual right of access to the Crown; (4) Right to regulate its own constitution; (4a) Right to regulate its proceedings; (5) Right to commit for contempt of their privileges even beyond the end of a session; (6) Exemption from jury duty; (7) Right to try dispute claims of peerage; (8) The right to try impeachments by the House of Com-

mons; (9) The right to act as a court of Final Appeal in Great Britain and Ireland; (10) The right of recording protest against any decision of the majority of the House in the journals. Their right to vote by proxy was abolished by a standing order in 1868 and their privilege of being tried by the peers in the House of Lords in cases of felony was abolished by a statute passed in the year 1936.

Sec. 31. Legal powers of the Parliament : limitation of its powers.

The British Parliament or more accurately the king-in-Parliament is the real sovereign of Great Britain and is the supreme law-making authority in the British Empire. Legally speaking, the Parliament can make any law it likes. As De Holme says, "Parliament can do everything but make a woman a man and a man a woman." Its uncontrollable and extensive Legislative authority goes unchallenged in the making and unmaking of ordinary laws and constitutional laws. It can also pass acts of indemnity in order to make illegal transactions legal. It can legitimate one that is illegitimate, adjudge a minor of full age. It can extend its own life as had been done by the Septennial Act of 1716. It can chance the order of succession and even dethrone a king. The Act of Settlement of 1701 and the Abdication Act of 1936 prove in clear terms the omnipotence of the Parliament in regard to choice of the monarch. It can even change the religion of people as was done in the past by the passing of the Act of Supremacy in 1534. It can dis-establish a church which has been given a permanent life by statute. In its negative aspect this Parliamentary authority means that no person or body of persons can make rules which override an act of Parliament. The judges in England cannot sit as a court of Appeal and declare a Parliamentary enactment as null and void. They can use their discretion only when the statute is silent.

Prof. Dicey is of opinion that although the legal sovereignty of the Parliament is absolute, the actual exercise of it admits of the following limitations :—

(i) The external limits which consist in the chances of oppressive laws being disobeyed by a large number of men.

(ii) The internal limits which arise out of the circumstances under which sovereign power has to be exercised.

(iii) The political sovereignty of the people which means the power of the Electorate to enforce their will.

(iv) League of Nations which influences the decisions of either House and controls their activity. (This contention has lost its importance in modern times).

(v) A free Press which can criticise the legislative measures of the Parliament.

(vi) The growth of the power of the Executive which practically controls legislations of modern times.

Sec. 32. The position of a member of the Parliament. Is he a mere agent or a delegate ?

Theoretically speaking a member of the British Parliament is not a mere mouthpiece of his constituents and enjoys freedom of forming his own opinion. Nevertheless, in modern times allegiance to particular party outweighs every other consideration and a member is often found to sacrifice his individual judgment to the opinion of the leader of his party in apprehension of any defeat of the party and the consequent dissolution of the House. This habit of owing allegiance to the party even at the cost of one's individual judgment is commendable partly because the opinion of the leader carries much weight and partly because such allegiance secures the solidarity of a party on which depends the strength and success of a democratic form of government.

Sec. 33. Parliament and National Finance.

In Great Britain the House of Commons has supreme control over the supply of money. The Cabinet cannot carry on administration without funds and no sum of money can be issued out of the Consolidated Funds without Parliamentary sanction. The House of Commons has to discuss the estimates of each department vote by vote before according necessary sanction to them. The Money Bills usually take up the major portion of the time of the House of Commons which is called upon to see to the estimates presented to the Committee of Supply by the Ministers-in-charge. The House can throw out an estimate and can freely criticise the activities of the Department. In practice the Cabinet stands in close relation to the House of Commons and the latter is seldom found to modify the financial proposal of the Government. Again, time allotted for the purpose is too short for detailed analysis of the financial programme and many demands for grants are passed without any discussion. The members, again, do not always possess the qualification of examining estimates and cannot for that reason exercise an effective control over public expenditure. The House of Commons is however found to exercise an indirect control in the following two ways :—

- (i) It regulates the life of the Cabinet itself,
- (ii) It compels the Controller and Auditor-General to submit the annual report to the House for review.

The functions of the House of Commons is not to throw out any financial proposal but to discuss matters with a view to finding

out a solution acceptable to the Ministry. The members are found to criticise the administration so that no national money is wasted and the Cabinet may arrive at a financial planning which will ensure both economy and efficiency. The opposition is sometimes vehement in its attack upon certain important items of expenditure but is always conscious of national interest to allow the minor items to pass smoothly.

Sec. 34. The Cabinet : its Nature.

The king of England is the titular figure-head. Although he is known as the head of the Executive, the system of constitutional monarchy which now prevails in England, has deprived him of the real powers which his predecessors enjoyed. The real executive in England is the Cabinet. The Cabinet has usurped the consultative and advisory powers of the Privy Council and has become an essential part of the British policy. Nevertheless, the Cabinet is an extra-legal body unknown to law. The names of its members are never officially announced, nor has its existence ever been recognised by any act of the Parliament. This want of legal status does not affect in the least its position in the British constitution. It advises the Crown in every matter of administration and exercises the prerogatives of the Crown. It also controls legislation by initiating legislative measures. Bagehot calls it a hyphen that joins, a buckle that fastens the Executive and the Legislature together.

The Cabinet is to be distinguished from Ministry. The Cabinet is the inner circle of the Ministry which comprises the entire body of crown officials having seats in the Parliament. The Ministry includes as many as 65 ministers of whom about 23 ministers go to constitute the Cabinet. After the Prime Minister has been chosen by the king the former chooses his colleagues and the king formally appoints them. The Cabinet thus constituted usually consists of the eight Secretaries of States, the Chancellor of the Exchequer, the First Lord of the Admiralty, the Presidents of the Boards of the Trade and Education, the ministers of Labour, Health, Transport, Agriculture and Fisheries, Lord Privy Seal, Lord President of the Council and Postmaster General. The ministry does not while the Cabinet does sit as a body to determine the policy of administration.

Sec. 35. The Cabinet : its Origin and Development.

During the reign of Norman kings there was the Great Council. This Council was composed of the kings' tenants-in-chief. The number of members gradually multiplied till at last every landlord came to occupy a seat therein. This council thus became too

Great Council.

large to perform satisfactorily the functions of an advisory council. The kings could not do without such a council and accordingly an inner circle known as the Permanent council was formed with picked men out of the larger body of the Great Privy Council. In course of time this permanent council became too large and unwieldy for purposes of private advice and resolution and the king had to select from among the members of the permanent council a few persons with whom he constituted his Privy Council. This Privy Council had in its turn become too large for despatch and secrecy and the king had to form a third inner circle with members in whom he could repose his confidence. This inner circle was called the Cabinet because its members used to meet the king in a smaller room.

The Cabinet which thus came into existence did not attain its pre-eminent position all on a sudden. There are successive stages in the development which we shall presently discuss.

(i) First, the Cabinet made its appearance in the shape of a small, informal, irregular 'camarilla' chosen by the king out of a larger body of the Privy Council. This inner Camarilla. council had very little powers as the Privy Council still continued to be *de facto* and *de jure* adviser of the king. This state of thing continued till the reign of Charles I.

(ii) The second period which commenced with the reign of Charles I and stretched upto the reign of Charles II witnessed some improvement in the position of the Cabinet. Cabal. The well-known 'Cabal' of Charles II was an important body in the machinery of administration. Although it could not oust the Privy Council from its position of a *de facto* and *de jure* advisory body of the Crown, it was strong enough to make its existence felt. The well-known Danby's case which was decided during the reign of Charles II established for the first time the responsibility of a minister for his action even though authorised by the king. The growth of the modern party system also made immense contribution to the development of the cabinet system.

(iii) The third period which closed with the reign of William III and Anne saw for the first time a ministry formed by the dominant party of the State. The formation of a homogeneous ministry marked a great advance in the growth of Cabinet form of government. The Cabinet which consisted of members of the dominant party became the 'de facto' executive authority but the theory of ministerial responsibility was still unknown. There was no prime minister and the king still enjoyed the right of presiding

over the meeting of the Cabinet. The fourth period which commenced with the reign of George I saw the first Prime Minister Sir Robert Walpole who resigned his office when he found himself defeated on a vote in the House of Commons and thereby established the principle of ministerial responsibility. With the growth of democratic ideals the Cabinet system acquired new strength and towards the close of the eighteenth century, the Cabinet established itself as a body consisting (a) of members of the Legislature, (b) of the same political opinion and chosen from the dominant party in the House of Commons, (c) prosecuting a concerted policy, (d) resigning in a body in the event of want of support in the Lower house, and (e) acting in accordance with the dictates of the Prime Minister.

A departure from the second principle was witnessed during the war of 1914-18 when for the efficient prosecution of war a War Cabinet was constituted with five members representing the then three political parties of England. Then again, the South African premier was taken in as the sixth member. After the war the Cabinet was reconstituted on the old lines. The national Cabinet of 1931 made a departure from the time-honoured rule that the Cabinet must act as a unit by allowing the members to place their own views to the Parliament. Next came the Act of 1937 which for the first time recognised the Cabinet and more particularly the Prime Minister and other Ministers.

Sec. 36. Essential characteristics of the Cabinet : Principles of the Cabinet System.

The Cabinet form of Government means a form of government in which the Executive is responsible to the Legislature. In

Responsibility to the House of Commons.	Great Britain the Cabinet is completely responsible to the House of Commons. The Cabinet members are collectively responsible to the House for the general policy of the government and for every important piece of departmental action. They must act as a unit and must resign in a body when they cannot command majority in the House of Commons.
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Concerted action.	The collective responsibility of the ministers to the House of Commons leads to concerted action on their part. Every important business has to be considered by the whole Cabinet and the ministers act as one person in matters of administration. Every member of the Cabinet should be willing to sacrifice his personal views in order to arrive at a concerted policy.
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In order that these ministers may agree to follow one particular policy of administration, it becomes necessary that the mem-

**The members
belong to the
party-in-
power.**

mer to resign. In the absence of a team-spirit the collective responsibility becomes unreal. There should also be close correspondence between the Legislature and the Executive in order that the entire administration may go on smoothly. For these reasons the members are chosen from the party which commands majority in the House of Commons. Again to maintain the harmony of views secrecy is observed in the conduct of affairs of the Cabinet.

One more characteristic of the Cabinet system is that the king remains outside the Cabinet. This absence of the king is in consonance with the maxim that the king can do no wrong. Again, although the king is outside the Cabinet, he exerts his influence on the Cabinet and the ministers are obliged to keep the king informed of all important matters within the Cabinet.

Sec. 37. The Composition of the Cabinet.

A new cabinet is to be formed on these four occasions;—(i) Expiry of the statutory period of five years; (ii) The passing of a vote of want of confidence against the existing Cabinet; (iii) The defeat of the existing Cabinet followed by a dissolution of Parliament; (iv) Resignation of the Prime Minister.

The Cabinet is composed in the following manner. The king calls the leader of the party that possesses majority in the House of Commons and asks him to form the Cabinet. Accordingly the Cabinet members are selected by him with due reference to their ability and their political opinion and the names of such members are submitted to the king who formally appoints them as ministers. The leader of the party is known as the Prime Minister. The number of members varies from time to time.

Any member of the House of Commons accepting a ministerial office had to vacate his seat and seek re-election. The re-election of Ministers Act of 1926 has dispensed with the necessity of re-election in case the office accepted was one not involving total disqualification from membership of the House.

The Cabinet generally consists of the Prime Minister and several other ministers holding important office. These include (1) the Lord President of the council, (2) the Lord Chancellor, (3) the Chancellor of the Exchequer, (4) the Home Secretary, (5) The Foreign Secretary, (6) The Colonial Secretary, (7) The Secretary for War, (8) The Secretary for Scotland, (9) Lord Privy

**The important cabinet
ministers.**

Seal, (1) The Chancellor of the Duchy of Lancaster, (11) President, Board of Trade, (12) President, Board of Education, (13) President, Board of Local Government, (14) Minister of Health, (15) Minister of Agriculture, (16) Minister of Labour, (17) Minister of Air, (18) Financial Secretary to the Treasury, (19) First Lord of Admiralty, (20) The Postmaster-General.

The Prime Minister occupies a pre-eminent position in the Cabinet. 'He is the keystone of the Cabinet arch'. The ministers are practically appointed by him. He is the leader and has control over every department of the government. The other ministers have to consult him in every important matter. He is the First Lord of the Treasury and Privy Councillor. He acts as an intermediary between the Cabinet and the Crown. In case he fails to command majority in the existing House of Commons, he can advise the Crown to dissolve the House in order to secure support in the new *House of Commons*.

It should be noted in this connection that the Ministry and the Cabinet are not synonymous. The Cabinet is composed of important ministers. Each of the Cabinet ministers enjoys a uniform pay of £5000 per annum. The Prime Minister and Lord Chancellor get an annual salary £10,000 each. The ministers of the second and third grades are not the recognised members of the Cabinet and get £ 3000 and £ 2000 respectively.

With an increase in the function of the Cabinet a secretariat has been attached to it. This secretariat has been entrusted with the functions of preparing agenda for discussion and of circulating matters at the request of a minister and of recording the decisions in the Cabinet meeting. This practice has destroyed the traditional secrecy of Cabinet meeting and as a matter of fact we find in the newspapers a brief summary of the proceedings of the Cabinet.

Sec. 38. What is meant by ministerial responsibility? Responsibility to the Legislature, to the party, to the country, to the Crown.

By ministerial responsibility we mean the responsibility of a minister to the House of Commons. Every particular minister is in charge of a department of administration and has to follow the general policy which the Prime minister chooses to adopt in consultation with other ministers. The important ministers have seats in the Cabinet. The Cabinet is in charge of the entire executive department and has to discharge its functions under the vigilant eye of the House of Commons. The Cabinet is responsible to the House of Commons and must command a majority there in order to remain in office. The Cabinet owes a collective responsibility to the House of Commons in this sense that they must resign in a body when their policy is condemned by the House of

Commons. They also resign when a measure of substantial importance sponsored by the Cabinet stands rejected in the House of Commons or a vote of censure is carried against the Government. The modern tendency is to distinguish between important and trivial bills and to determine whether the defeat in regard to important Bills registers considered judgment of the Commons or is a mere accident. The House of Commons has power to withhold supply of funds and makes its control effective by refusing to sanction the funds that may be required by the Executive. Members of the House of Commons may, again, ask questions to individual ministers relating to any matters which touch them. This responsibility to the House of Commons in a way proves the control of the people over the activities of the ministers. The Prime minister, again, can test his popularity by dissolving the Parliament which does not support him and by seeking re-election. If at this re-election he commands a majority, he and his Cabinet continue to rule the country. Thus we see that ministerial responsibility really means the responsibility of the Executive to the Electorate.

In modern times this responsibility of the Cabinet to the country or the Electorate is clearly proved by the fact that the Cabinet does not resign in the case of an adverse vote in the House of Commons but feels the pulse of the Electorate by advising the king to dissolve the Parliament and seeking re-election. Again, on several occasions the Cabinet has been found to resign even though it commands a majority in the House of Commons. Thus the Chamberlain Cabinet resigned when it found that the public opinion was against the continuance of the Cabinet after the Norway disaster.

The Cabinet is responsible to the party from which the members are recruited in this sense that it is morally bound to carry out the policy of the party. It also owes a theoretical responsibility to the Crown by reason of the fact that the members of the Cabinet are appointed by the king and hold their office during his pleasure; but this responsibility has no real meaning because of the disability of the king to remove a member at his sweet will and pleasure. This responsibility means nothing more than this that the minister has to keep the king informed about the business of the Government.

Sec. 39. How the House of Commons controls the Cabinet.

In Great Britain as in every other responsible government the Cabinet has been placed under the strict control of the representative chamber. The House of Commons can force the resignation of the Cabinet in one or other of the following ways:—

- (i) It may move a token cut in the salary of a minister and the Cabinet has to resign when this motion is carried.

His Majesty to dissolve the House. The Parliament is also prorogued and summoned on the advice of the Cabinet.

The Cabinet has been empowered by Acts of Parliament to apply, amplify and modify the general provisions of the Act in accordance with the need of particular case. As a result of this we find many rules and orders issuing out of the various executive departments and having the force of law proper.

The Cabinet cannot, by convention, discuss the budget estimates and any new proposal for taxation which is prepared by the Chancellor of Exchequer in consultation with the Prime Minister. It has no voice in the matter of conferring of honours and the exercise of prerogative of mercy.

Sec. 42. Cabinet and the Parliament: Cabinet and the Crown

The English Constitution is one of checks and balances. The essence of the constitution lies in the delicate equipoise between the three powers, the Ministry, the House of Commons and the People. The Cabinet controls the House of Commons by initiating all important legislative measures and securing a majority of supporters in the House of Commons. Again, when it fails to secure majority the Prime Minister can advise the Crown to dissolve the Parliament and appeal to the people for support. On the other hand, the Ministry or the Cabinet is controlled by the House of Commons. The members of the Cabinet are jointly responsible to the House for the general policy and individually responsible for their respective departments. The House can ask questions, criticise the measures taken by the ministers, call upon the Ministry to account for every act, compel their resignation by refusing supplies and can pass a vote of want of confidence. The relation between the Parliament and the Cabinet has changed considerably in recent times. Formerly, the Parliament had a stricter control over the Cabinet and could make and unmake the Ministry at its sweet and pleasure. With the growth of party-organisation the Cabinet has strengthened its position ; members are now returned on party basis. The party-in-power which is called upon to form the Cabinet can count upon the support of members of the House of Commons. This gives the Cabinet a position almost similar to that of a dictator and enables it to enforce support by threats of dissolution. A private member must also keep himself in close touch with the Cabinet and be ready to render his whole-hearted support ; otherwise the party-in-power will not support his candidature in the next election and he will thus lose his seat and salary. Again, with the extension of franchise the candidates do not venture to contest an election except with the aid of party organisation. This makes for a healthy co-operation with the party-in-power and with the

The Cabinet and the Parliament control each other.

Cabinet. The growth of political consciousness and education and rapid development of political intelligence have gone a great way in strengthening the position of the Electorate. Public opinion now influences the activity of the Cabinet in a greater degree than the members of the House of Commons. The Cabinet thus works out its programme without any serious opposition in the House of Commons and pays greater attention to the mandates of the Electorate than to the will of the House of Commons.

The Cabinet possessed of a majority must act in a manner which does not flout public opinion and sow the seeds of dissension among its supporters. If it behaves otherwise, it shall have to make room for the opposition. Instances are not rare when the Cabinet had to change its minds in apprehension of discontent in the rank and file of its supporters. We thus find the Cabinet of modern times does not rule as a dictator.

The Cabinet has successfully ousted the king from the pre-eminent position which he once occupied in the sphere of administration. The king's function practically ends with the appointment of Prime Minister. The Cabinet again, has been entrusted with the exercise of prerogatives which represent the residue of the arbitrary authority legally left in the hands of the king. The Cabinet must keep the king informed of all important matters relating to administration and must give careful consideration to the advice which he tenders. One more point that deserves notice in this connection is the legal right of the king to dismiss his ministers and to dissolve the Parliament at his sweet will. This power was experienced by George III in 1783 and has now become obsolete.

Sec. 43. Departments of Administration.

The English Executive consists of twenty-four chief departments each of which is in charge of a minister and a number of subordinate departments. There are seven Secretaries of State viz., (1) Secretary of State for Home affairs who advises the Crown in regard to the exercise of the prerogative of mercy, has certain statutory duties in connection with the Naturalisation and Extradition Acts and maintains peace. He receives all petitions to the Crown and all royal warrants and orders must bear his signature. He controls the London Police and supervises the police establishments of other places. (2) The Foreign Secretary deals with foreign policy, provides the consuls and diplomatic agents of Great Britain with necessary instructions and corresponds with foreign governments. (3) The Secretary of State for Colonies controls the colonial policy, and recommends the appointment of colonial governors. (4) The Secretary of State for Dominions has to perform functions relating to the

Seven Secretaries of States and their functions.

Dominions and the Imperial conferences. (5) The Secretary of State for War is assisted by the Army Council of which he is the president. The defence services are controlled by three departments—the Admiralty Board, the War office and the Air ministry. These three departments are, again co-ordinated by the Committee of Imperial Defence. (6) The Secretary of State for Air and (7) The Secretary of State for Scotland have to perform certain specified functions. There are several other important officers. The Lord Chancellor is an important officer. He is appointed by the Crown on the advice of the Prime Minister. He is the President of the House of Lords, of the Court of Appeal, of the High Court and of the Chancery Division. He is in charge of the Great Seal and can appoint and remove the Justices of Peace and the county-court judges.

The Chancellor of the Exchequer holds another important office. He is the head of the Treasury and controls the revenue and expenditure of the State. He prepares the budget and adjusts taxation. The Chancellor of the Exchequer has however no connection with the Exchequer which means the place where money is disbursed according to law and is under the control of the Comptroller and Auditor-General. The officer is answerable to the Parliament and performs his two-fold function. As a Comptroller he has to see whether any demand for money is supported by authority of the Parliament and when he is so satisfied he is to order for the transfer of money from the Consolidated fund to the proper disbursing officer and as an Auditor-General he has to audit the accounts of public departments. The Chancellor of Exchequer is aided by a Parliamentary Secretary and a permanent Secretary. The latter is in charge of the three main sections of the Treasury.

There are several administrative Boards each under the control of a minister who is its president. These include the Board of Admiralty, the Board of Trade, Board of Education and Board of Local Government. The Board of Admiralty consists of the First Lord who is a member of the Cabinet, four Sea Lords, the Deputy Chief of Naval Staff, the Parliamentary Secretary, the Civil Lord and the permanent Secretary. This department has chief concern with the defence of the Empire. A Committee of Imperial Defence has been constituted with a view to co-ordinating the activities of the Board of Admiralty with those of War-office and the Forces. This Defence Committee is presided over by the Prime Minister. The Board of Trade never meets and its functions which include publication of statistics, regulation and control of harbours and merchant vessels and arbitration of labour disputes are performed by the president of the Board. By the Education Act, 1944 the Board of Education was abolished and its place

was taken up by the Ministry of Education. The President of the Board became the Minister of Education. There are also several ministers-in-Charge of the departments of Agriculture, of Labour, of Transport, of Health, and of Air. The Ministry of Agriculture and Fisheries deals with the subsidies for beet sugar and cattle and has to set up marketing Boards. The Ministry of Labour has been charged with the responsibility of administering the Conciliation Act and Unemployment Insurance Act. The Ministry of Health has got to perform manifold duties for promoting sanitation and for preventing adulteration of food and drugs.

Another important department which sprang out of the Board of Trade is the Ministry of Transport which exercises powers of control over the railways, tramways, canals, roads, bridges and vehicles. Ministry of Civil Aviation was created in 1944 to take charge of the administration of civil aviation.

Sec. 44. Opposition Party : its Function.

One outstanding feature of the English constitution is that it tolerates or rather encourages opposition to the Government constituted by the party-in-power. It is also surprising to note that provision has been made by the Act of 1937 for the payment of salary to the opposition leader so that the latter may devote exclusively to oppose the measures of the Government in all possible ways. This is a unique provision and accounts for healthy growth of the party-in-opposition. The opposition party renders immense services by criticising the policy of administration and compelling the party-in-power to follow a line of action which has the support of public opinion. If the party-in-power flouts public opinion it may come to lose the confidence of the House of Commons. This gives the opposition-leader the chance of forming the Cabinet and of assuming all governmental powers. It should be noted in this connection that opposition party never takes up an antinational attitude. In times of national crisis it often comes forward to agree with the Government on natural issues. This attitude of party-in-opposition helps greatly in the matter of successful prosecution of war and of averting any national calamity.

Sec. 45. Weakness of the Cabinet System : The Bureaucratic Tendency in modern times.

The various departments, among which the entire work of administration is distributed, are administered by the ministers who serve as official heads. These ministers, who remain in office only for a few years during which their party is in power cannot be expected to have any experience in the departments which are placed under their charge. The ministers, again have to

Defences of
the Cabinet
system.

attend the Parliamentary sessions and the Cabinet meetings and there are thousands of engagements which take up much of their time and energy. They come to occupy these posts of responsibility quite accidentally and may lose them the next morning when their party ceases to command majority in the Parliament. This makes their position insecure and they do not care to master even the departmental rules. The result is that these ministers who are mere amateurs in the art of administration cannot exercise any effective control over the permanent staff who serve under them. On the other hand the permanent civil servants, who are generally skilled and experienced men and can teach their masters many things relating to the departments, will surely impose their will on their masters and shape the policy of administration unless the ministers have strong personality and wisdom to impose on their officials. The Cabinet is too large a body for the promptness in administrative action. The difficulty became clear during the last war when a War Cabinet had to be created. Again, the responsibility of the Cabinet to the House of Commons is a serious clog on the powers of the ministers to act independently according to the exigencies of time.

This system of government by amateurs has however been supported in England on the following grounds : (a) The ministers are to supervise the work of the permanent staff and do not require any expert knowledge to perform their functions satisfactorily ; (b) When an expert supervises the work of an expert, the master and the servant will generally disagree and the work of the department will suffer greatly on that account.

Sec. 46. The Permanent Civil Service.

The System of government which prevails in England is responsible in the sense that every administrative department is under the control of a minister who is responsible to the Parliament for all his actions. The ministers remain in office as long as they or the Prime Minister who has chosen them can command majority in the Parliament. These departmental heads are mere amateurs and cannot profitably be employed in performing the detailed works of the departments. They merely act as supervisors while the routine-work of the departments are entrusted to the permanent staff whose expert knowledge and experience have contributed much to the successful working of the departments. This permanent Civil Service is non-political in character and its members are not allowed to sit in the Parliament and to take part in any political campaign.

The members of the Permanent Service were in former times recruited by nomination and the choice generally fell upon the

sons of aristocratic families. The system of recruitment could not ensure efficiency in the administration and was severely criticised by the political thinkers of the time. In the meantime a system of competitive examination was introduced in India and yielded satisfactory results. England however remained unmoved till 1854 when a Treasury Committee recommended the introduction of a competitive examination for the recruitment of officers in the Home Civil Service. This was followed by an order-in-council which appointed a Civil Service Commission of three members and authorised it to conduct the examination. The members of the Permanent Service thus recruited by competitive examination hold their office till they complete their sixtieth year and enjoy certain privileges which distinguish them from other officers of the Government. Their promotions and salaries and pensions are regulated by rules framed by the Civil Service Commission, but the administrative control rests with the Establishment Department of the Treasury.

This recruitment of officers has sometimes been attacked on the following grounds :—(i) The system of examination is defective inasmuch as it lays too much emphasis upon the theoretical attainments of the candidates and gives little scope for the employment of candidates whose poverty stands in the way of acquisition of theoretical knowledge. The method of promotion below the administrative class is too mechanical and has little reference to the merits and efficiency of the officers. During the recent war the members of the civil services could not work with an efficiency and promptness which the exigencies of the war demanded. This makes a strong case for the re-organisation of the civil services on more a scientific line.

**Sec. 47. The present Tendency of Executive pre-eminence:
How far it affects liberty of the English.**

Liberty of the people in democratic form of government depends greatly upon the relation which the Executive bears to the Legislature and the Judiciary. If the functions of the Executive are strictly confined to enforcement of laws made by the people or their representatives in accordance with the decisions of the judges, the rights and liberties of the people are adequately protected. When, however the Executive extends its spheres of activity by usurping the legislative and judicial powers, the Executive will surely act arbitrarily in utter disregard of the rights of the people. This deplorable state of things has been the source of danger in the United Kingdom which has been painfully experiencing the interference of the Executive in the domains of the Legislature and of the Judiciary. The chief reasons why the Executive has come to occupy the foremost position in the governmental

machinery are congestion of business in the Parliament and the multiplication of governmental functions over a wide range of social and economic activities.

The Parliament has no time to enact every kind of legislation which the present-day Government requires for the fulfilment of its socialistic programme. It merely gives out the skeletons of laws and authorises the Executive to supplement the same by means of rules and orders. Orders are sometimes issued by the departments in the form of provisional orders and actions may be taken at once in pursuance of such orders. After action has been so taken, these orders are placed before the Parliament for confirmation and are confirmed automatically. There are again other orders and rules which are issued by the departments in order to make up the deficiencies in the Acts passed by the Parliament. Sometimes authority given to the Executive is extensive enough to make rules in the modification of the statutory provisions. The rules and orders are thus allowed to override the provisions of an Act. As an instance of such extensive authority we may refer to the Rating and Valuation Act of 1925. The delegation of legislative power at once raises the Cabinet to the proud position of a dictator and goes to enhance the power of the bureaucracy which practically participates in the framing of rules and orders. And it is no exaggeration to say that Cabinet dictatorship is merely a cloak behind which the Civil Service is growing in power. These rules and orders are drafted by the permanent staff of the Civil Service who owe no responsibility to the Legislature or to the people and have the force and effect of laws in the same way as the laws made by the Legislature. These rules and orders have been a menace to the liberty of the people and the judges who have all along protected them from the tyranny of the Executive cannot give any protection because they have to mould their decisions with reference to these rules and orders also. Again, the Executive has sometimes been authorised to decide disputes of certain kinds and their decisions have been made final. Thus a doctor whose name has been struck off the pannel by the Minister of Health for administering medicine of a value higher than that required for the purpose of checking the disease has no right of appeal against the decision. In spite of all the merits which these departmental tribunals may claim by reason of their expert knowledge and speedy disposal there is no reason why they should not be made subject to the control of the ordinary courts which will be entitled to revise any erroneous decision.

Again, this interference of the Executive in domains which, strictly speaking, belong to the Legislature and the Judiciary is

undemocratic and cannot for that reason claim the support of the people and their willing obedience to the executive orders. The Government ceases to be based upon public opinion and rules the country by executive orders. The Rule of Law which has so long been the guardian of liberty in England has lost its power and the principle of Executive independence has already gained sufficient strength to encroach upon the solemn rights of people. Several suggestions have been made to restore the Rule of Law and to reinstate the supremacy of the Legislature. If the congestion of legislative business is the cause of this crisis in England, it is advisable to set up separate Parliaments for England, Scotland and Wales and to entrust them with the purely internal legislation. In this way the present Parliament will be relieved of pressure of business and find enough time to make any law which concerns the Imperial interests and foreign relations. The Parliament will thus be in a position to dispense with the necessity of delegating certain legislative functions to the Executive. If the creation of separate Parliament is not possible the Parliament can conveniently set up economic councils and delegate some of its legislative power to them. Even if this measure cannot be adopted, the Executive Departments should be associated with councils consisting of representatives of the various interests which will be given power of initiating legislation.

Another suggestion which comes from the Committee on Ministers' powers set up in 1929 makes it obligatory on the Minister to lay down their rules and regulations before a Standing Committee of the House of Commons for confirmation and casts upon the said committee the duty of scrutinizing the rules and regulations and if it so desires, of referring them to the Parliament for according necessary sanction.

Sec. 48. The Executive and Emergency Legislation.

The Parliament takes much time in making laws. In times of emergency promptness of action is of greater value than cool deliberation with which legislative action of the Parliament is usually associated. This makes a strong case for delegation of power of legislation to the Executive in order to enable the latter to cope successfully with emergencies. The British Parliament has been found to pass Acts authorising the Executive to make regulations which may be deemed necessary to cope with emergencies. The most recent piece of such legislation is the Emergency Power (Defence) Act of 1939 which authorises the making of Defence Regulations by Order-in-Council. These Regulations must strictly conform to the provisions of the Act. Whenever the Executive exceeded the power conferred by the Act the court was competent to declare the Regulation *ultra vires* [A. G. V. Hancock

(1940) 1 K. B. 427]. The Parliament also has the right of annulling any Regulation framed under the Act within 28 days. Such Parliamentary control over Regulations made by the Executive will surely check the abuse of power by the Executive and guarantee individual liberty. But no court can challenge the action of the Executive taken in pursuance of any valid Regulation when the Home Secretary is satisfied as to the reasonableness of the action taken.

Sec. 49. The Privy Council.

The Privy Council owes its origin to the Curia Regis of the Norman times. Formerly, it played an important part in the British constitution inasmuch as it was the advisory body of the Crown. Its membership was limited to the landed aristocracy. During the Tudor period this council virtually exercised the prerogatives of the Crown. Gradually this council became too big a body to preserve secrecy and promote promptness in administration. Charles II chose his close friends and formed the famous Cabal out of which grew the present Cabinet. With the growth of the Cabinet the Privy Council has lost its importance and its functions are now confined to issuing of proclamation and Orders-in-Council and to certain judicial functions exercised through its committees and to certain miscellaneous matters such as selection of sheriffs and administrations of oath. The Privy Council has been empowered by Parliament to frame general rules regarding the administration of work-houses, to issue commands over authorities in case of delinquencies, to grant licences and to hold enquiries and inspection in certain cases. It still remains a formal body to carry out the decision of the Cabinet which is unknown to law. The members of the Cabinet are also privy councillors and they have usurped many functions of the Privy Council. The members of the Privy Council are generally men of position who have been given the privilege in recognition of their services to the State. They are appointed by the Crown and can be dismissed by the Crown. The Council never meets as a whole except on the occasion of coronation of a new king or on some other ceremonial occasions. Three members of the Council form a quorum and the orders of the Council are authenticated by the signature of the clerk to the Council. There is the Lord President of the Council but the king usually presides in all meetings which are not meeting of committees. The Privy Councillors have right to use the title "The Right Honourable" before their names. They are privileged to kiss the king's hand and have to take oath as Privy Councillor.

Sec. 50. The Judicial System.

In 1873 the Judicature Act was passed which fixed the terri-

torial jurisdiction of the courts. This act with subsequent amending acts is the basis of modern Judicial System.

The Supreme Court of Judicature consist of the (1) High Court possessing both original and appellate jurisdiction, and (2) The Court of Appeal.

The High Court consists of the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division and 29 Puisne Judges. It acts in three divisions, viz., (1) The King's Bench Division, (2) The Chancery Division and (3) The Probate, Divorce and Admiralty Division. The Supreme Court of Judicature (Amendment) Act, 1944 has raised the number of Puisne Judges from twenty-nine to thirty-two with a minimum of twenty-five. A Puisne Judge of the High Court must be a barrister of not less than ten years' standing. The salary is £5000 with a pension of £3,500.

The King's Bench Division consists of seventeen judges with Lord Chief Justice as president. The Chancery Division consists of six judges and the Lord Chancellor as the president. The Probate, Divorce and Admiralty Division consist of the president and two judges.

The King's Bench Division tries offences committed by Colonial Governors, the Governor-General and the Provincial Governors of India and the High Court Judges.

A Divisional Court of the King's Bench Division consisting of two or more judges has jurisdiction (i) to issue writs of *habeas corpus*, orders of certiorari, mandamus and prohibition, (ii) to determine questions of law in cases stated by the Quarter or Petty sessions, (iii) to hear appeals from the inferior courts other than from county courts ; (iv) to hear appeals relating to Parliamentary and Municipal election petitions, (v) to hear appeals in certain cases from a judge or Master in chambers.

Divisional court of the Chancery Division hears appeals from the county courts in bankruptcy matters. A Divisional Court of the Probate, Divorce and Admiralty Division hears appeals from courts of summary jurisdiction against separation and protection orders as well as appeals from the Work Commissioner against cancellation or suspension of master's, engineer's and mate's certificate.

Under the Supreme Court of Judicature (Amendment), 1938 the Court of Appeal consists of the Lord Chancellor, any ex-Lord Chancellor, any Lord of Appeal in ordinary agreeing to act, the Lord Chief Justice, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division and eight Lord Justices in Appeal. This court chiefly hears appeals from the High Court and from the county courts. It also exercises jurisdiction formerly

exercised by the Lord Chancellor and the Court of Appeal in Chancery, by the Court of Exchequer, by the Privy Council in Admiralty matters.

The Court of Criminal appeal which owes its origin to the Criminal Appeal Act of 1907 consists of the Lord Chief Justice of England and eight judges of the King's Bench Division. Three constitute a quorum. It now exercises jurisdiction over cases which were formerly tried by the Court of Crown Cases Reserved. To this Court persons convicted of indictment may appeal on questions of law and under certain conditions of fact. Its decisions are final unless the Attorney-General certifies that they involve important questions of law in which case further appeal lies to the House of Lords.

There are two courts of final appeal viz., (1) The House of Lords and (2) The Judicial Committee of the Privy Council.

(1) *The House of Lords* :—The House of Lords consists of the Lord Chancellor who acts as the President, the six Lords of Appeal in ordinary or Law Lords and such peers as have held high judicial office. It is the final court of appeal from any judgment or order of the Court of Appeal in Great Britain and Northern Ireland from which appeal lay to the House of Lords by Common Law or statute. An appeal also lies to the House of Lords from the decisions of the Criminal Court of Appeal when according to the Attorney-General the decisions involve points of law. The Lord Chancellor acts as president in the final Court of Appeal. No appeal lies from the Court of Appeal to the House of Lords except by the leave of the one or the other. The House of Lord is bound by its own decision.

(2) *The Judicial Committee of the Privy Council* :—It is the highest court of appeal from the decisions of the High Courts of India and of the Dominions and Colonies of Great Britain. This court consists of the Lord President, the Lord Chancellor, six Lords of Appeal in ordinary, former judges of the High Courts in India, not exceeding four and former judges of the Superior Courts in the Colonies, not exceeding seven. Four of these would form a quorum.

Since the passing of the Statute of Westminster, 1931, the Dominions have been authorised to amend their constitutions so as to do away with the existing provisions regarding appeal to this committee. The Irish Free State has already done away with the jurisdiction of this committee to hear appeals.

Under the control of the Supreme Court of Judicature there exist County courts for civil cases and the courts of the Justices of Peace, courts of Urban Magistrate for criminal cases. The County courts have jurisdiction over definite area and in cases involving claims of less than £100. Each County court is presided over by a judge appointed by the Lord Chancellor from among barristers of at least seven years' standing. The judge of each court generally sits alone but the litigants may demand a jury of eight members. The County courts which are about 500 in number are grouped under fifty-four circuit courts each composed of one or two judges. These judges travel in circuits and hold a district court at least once a month. Appeals from the decisions of these courts lie to the High Court.

Various kinds
of Courts.

There is also a right of appeal to the court of Appeal on a question of law or the admission or rejection of evidence.

The Justices of Peace who are appointed by the Lord Chancellor for each county act singly, in petty sessions and Quarter sessions. The Justices of Peace render honorary services. The Court of Petty sessions consists of two Justices. The important cases are tried in Quarter sessions where all the Justices meet. The Act of 1938 makes provisions for a stipendiary magistrate to try cases triable by the Quarter sessions. Appeals also lie to the Quarter sessions from the decisions of the petty sessions. The Quarter sessions may commit cases to the Assize Courts which consist of either judges of the King's Bench Division or Commissioners nominated by the Crown and which are held four times a year. The King's Bench Division acts as a court of Assize for London and Middlesex. The criminal cases except those which are tried by a Court of summary jurisdiction are tried by a jury of twelve.

Petty Ses-
sions and
Quarter
Sessions.

Sec. 51. The Privileges of the Judges.

To secure the independence of the Judiciary the following privileges have been given to the judges :—(1) The judges of the superior courts enjoy almost absolute immunity from civil action and criminal prosecution for acts done or omissions in their judicial capacity even if the move is malicious. The judges however cannot claim this immunity when they refuse writs of *habeas corpus* in vacation and when knowledge of want of jurisdiction is proved. (2) The judges have power to punish contempt of court by summary proceedings. (3) The judges are not removable except on joint petition of both the Houses of Parliament. The judges of the Supreme Court hold offices during good behaviour. (4) To threaten a judge while sitting would be a high misprison,

to slander would be indictable as *scandalum magnatum* and to slay the Chancellor or a judge of King's Bench would be a treason. (5) Their salaries are permanent charges on the Consolidated Fund.

Sec. 52. Appointment of the Judges : Independence of the Judiciary.

In modern times great stress is laid upon the independence of the judges. The judges are the guardians of individual liberty and they cannot play their role satisfactorily unless provision is made in the constitution to make the judges independent of the control of the Executive and the Legislature. In England the Act of Settlement, 1701 has given the judges of the superior courts a security of tenure. They are appointed by the Crown on the recommendation of the Lord Chancellor and hold their office during good behaviour. The Crown cannot remove them from office except on a joint address of both the Houses of Parliament. The judges of inferior courts however, hold their offices during king's pleasure and can be dismissed by the Lord Chancellor for incapacity or misconduct but the Lord Chancellor rarely exercises his power in this direction.

Sec. 53. The Local Government.

The whole of England and Wales is divided into sixty-three administrative counties for the purpose of local government. Each of these counties is administered by a county council which consists of councillors elected for three years, Aldermen elected by the Councillors for six years, and a Chairman elected by the Councillors and Aldermen for one year. Half of the aldermen retire every three years. The franchise has been extended by various acts and now men and women who are either ratepayers or wives or husbands of ratepayers participate in the election of candidates from their wards. For the purpose of election each county is divided into divisions each of which sends one councillor. The County Council appoints its officials. The larger towns are counties by themselves. The county councils now enjoy wide powers. They can raise funds by local taxation and get contribution from the Central government. They can also borrow money for certain purposes such as the erection of public works. They have to discharge various duties in connection with elementary Education, the maintenance of roads, lunatic asylums, the licensing of amusements and regulation of fees of inspectors and other public officers and registration of places of worship. The county police is administered by a body consisting of Justices and County Councillors in equal numbers.

The business of a county is transacted through committees. There are as many committees as there are functions to be discharged. The councillors have seats in one or other of these committees. Each committee has to make an estimate of funds required by it for the year and must get the same approved by the council. The details of each department are worked by the permanent staff consisting of the town clerk, the treasurer, accountant, surveyor, medical officer and constable.

The administrative counties are in their turn sub-divided into boroughs, urban and rural districts. The boroughs are of three classes according to the size of population. (1) The County boroughs, (2) the larger Quarter sessions boroughs and (3) the smaller Quarter sessions boroughs. The constitution of a borough is laid down in the charter of incorporation granted by the Privy Council and is contained in the Municipal Corporation Act. It is governed by a Mayor and a council consisting of councillors and aldermen. The Mayor is an ornamental figure, having little or no special executive power. The real executive and legislative authority is the borough council. There are two classes of committees—the ordinary committee and the statutory committee—through which the work of the County Borough and District Councils is mainly conducted.

The urban districts are composed of towns and thickly populated areas while the rural districts are composed of parishes. Each of these districts is administered by a council formed on the same plan as a county council.

In the district councils there is no provision for the election of aldermen but they have the right of co-opting outsiders as members of the several committees into which the councils are divided for the purposes of administration. These councils render immense services in connection with sanitation, water supply, public health, maternity and child welfare and have to discharge their duties under the strict supervision of the county councils.

The rural districts are sub-divided into parishes. Larger parishes have a parish council and a parish meeting : smaller parishes have parish meeting and two or more of them may, if they desire, be grouped under a parish council ; these councils take an active interest in local administration. A parish council is elected triennially for three years and elects its Chairman annually. These councillors are elected by the Parish meeting and form a corporate body.

The most important function that has been entrusted to the county councils and borough councils is the organisation of education. They are responsible for the training of teachers, and for the provision of physical training of persons under sixteen years of age.

London which now comprises the city of London, twenty-eight metropolitan boroughs, The Inner Temple and the Middle Temple was made an administrative county by the Act of 1939.

The County of London. The county of London has its own council which is composed of 124 councillors and 20 aldermen. They elect from among themselves a chairman who presides over the council. The entire administration is carried on through the eighteen committees assisted by a large body of permanent officials. It exercises considerable control over the borough council which enjoys certain statutory powers. It maintains its own police and is responsible for the maintenance of bridges across the Thames. The county council is in charge of sewage, roads, bridges and education and enjoys wide powers relating to licensing of theatres and the street railway construction.

The City of London: how administered. Each one of the 28 boroughs into which the county of London is divided has a borough council consisting of councillors, aldermen and a chairman. The city of London has a separate organisation of its own. This old city is administered by a Lord Mayor and three councils—the Court of Aldermen, the Court of Common Council and the Court of Common Hall. The councillors and aldermen are elected by the freemen of the city who have enrolled their names by paying a fee of one guinea. The Lord Mayor is elected by the Court of Common Hall and draws an annual salary of £10,000. He is an ornamental figure and has to spend the whole of his pay and sometimes even more than that in official entertainments.

In addition to the organisation of Local Government as outlined above there are certain adhoc authorities for the successful administration of certain public utility services within Greater London. These include the Metropolitan Water Board, London Passenger Transport Board and similar other organisations.

The organisation of local government has produced satisfactory results. Its success is due partly to the combination of lay members with permanent expert officers and partly to the sympathy, control and supervision of the central government over local affairs.

Sec. 54. Local Finance.

The local authorities require a large amount of funds for the proper performance of their varied and extensive functions. The

revenue of these authorities is derived from the following sources viz., (i) Land and houses owned by them, (ii) Tramways, Gas works and Water works which they have been in possession from time immemorial ; (iii) Local rates which these authorities are authorised to impose on land and building situated within the areas under their control ; (iv) the grants-in-aid which they get from the Government in lieu of the services rendered by them in connection with the Police, Education, etc. ; (v) a portion of the revenue derived from Death duties ; (vi) Loans which these local institutions raise with a view to supplying funds for capital expenditure.

The budget of these local institutions are to be sent to the Ministers of Health and their accounts are audited by the auditors appointed by the Ministry of Health.

Sec. 55. How far these local bodies are autonomous.

The institutions of local government in England do not enjoy any real autonomy. Although the central government does not exercise a rigid control over these institutions as is exercised by the French Prefect over the local authorities we cannot say that the central government in England has no control over local affairs. The control of the central government over local authorities is gradually increasing and is exercised through the following departments :—The Ministry of Health, the Ministry of Transports, the Ministry of Education, the Board of Trade, the Home office and the Electricity Commissioners. The Central Government is now found to make rules and regulations for the guidance of local authorities. It gives grants-in-aid to these authorities which conform to certain minimum standard of efficiency and has to appoint inspectors who will enquire and report as to whether the recipients maintain the minimum standard of efficiency. Again, the local authorities cannot perform certain functions unless they have obtained necessary permissions from the government department concerned. All this leads to the irresistible conclusion that the Central Government retains in respect of the local institutions the right "to advise, inspect, regulate, give or withhold approval."

Sec. 56. The Government of Ireland.

Formerly Ireland was included within the United Kingdom, united as it was with England, Wales and Scotland under the same King and Parliament. This union could not bring peace and well-being for Ireland or more particularly for Southern Ireland which contained men of Roman Catholic faith. Agitations for a separate government for Ireland manifested themselves in the beginning of the nineteenth century when the Irish party appear-

ed under the leadership of Isaac Butt. He was succeeded by Charles Stewart Farnel whose effort in strengthening the Irish Nationalist Party cannot be exaggerated. The agitation for separation reached its climax in 1916 when a rebellion broke out in Dublin. The then ruling authorities succeeded in suppressing the rebellion and as a result of this the old Home Rule Party practically disappeared from the political field, but the Irish desire for freedom was indomitable and the old Irish Home Rule Party was succeeded by the Sinn Fein Party whose revolutionary programme caused fear in the hearts of British people. The people of Northern Ireland who were predominantly Protestant did not take part in the revolution and remained loyal to the existing Government. Hence in order to restore peace the British

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Parliament passed the Government of Ireland Act of 1920. The said act provided for two separate Parliaments one for Southern Ireland and the other for Northern Ireland. This settlement was cordially received by Northern Ireland but Southern Ireland remained unmoved and continued its revolutionary activities till a Peace Treaty was signed in 1921. This peace treaty was ratified by Irish Free State (Agreement) Act, 1922 which established the Irish Free State and made it a co-equal member of the Commonwealth of Nations. The Southern Ireland thus secured a position analogous to the Dominion status. The Irish Free State constitution was drawn up which lasted till 1937. During this long interval the Irish people who had been groaning under certain grievances kept alive their national feeling by making agitation for compulsory study of Erse and for adoption of a national flag. The statute of Westminster, 1931 conferred on this Free State a national freedom by virtue of which a new republican form of Government came into being at the end of 1937. The Irish Free State came to be designated as the Eire. It is said to be an independent democratic State having a tricolour national flag and a national language known as Erse. The new constitution, which is a creation of the Irish people makes no reference to the British crown, asserts fully the right of the government of the Eire to regulate its foreign policy and to remain neutral when Great Britain is at war with any foreign nation. De Valera had the courage to refuse to take oath to the king of England and to remove the Governor-General. Eire comprises the former Irish Free State and aspires to include Ulster within itself. The President of this Irish Republic is to be elected by the direct vote of the people for a term of seven years. He is the chief executive head and has full command over the Irish Defence Forces. He is aided in his work by a Council of State composed of the leading politicians and judges. He has to work in collaboration with the Ministry which commands the con-

fidence of the Lower House of the Legislature. He may refuse to dissolve the Legislature when the Prime Minister who lost his majority advises him to do so and may compel the latter to resign. He is to guard against any breach in constitution and may refer a bill which appears to contravene any constitutional provision to the Supreme Court : if the court reports that the bill is unconstitutional the President must refuse his assent thereto. He may also refer a bill to the Electorate when majority of the Senate and a third of the Dail ask him to refuse assent thereto. The Prime Minister so long as he commands majority in the Legislature is not under the control of the President. The Legislature (*orireachtas*) consists of the President and the two chambers—House of Representatives (*Dail Eireann*) and a Senate. The Senate consists of sixty members of whom 49 are elected on vocational basis and the rest nominated by the Prime Minister. This method of functional representation makes it a representative chamber. This chamber, again has a life of 7 years but may be dissolved earlier. The dissolution of the Dail must within 90 days be followed by dissolution of the Senate. In this respect it differs from the House of Lords which is permanent chamber constituted on principle, of heredity.

The House enjoys power almost similar to those enjoyed by the House of Lords of England. It can postpone the passing of money bills for 21 days and other bills for 90 days. The Dail Eireann consists of 138 members elected by a system of proportional representation. The Dail is more powerful than the Senate. Constitution can be amended by the ordinary Legislature with the approval of the people expressed at a referendum.

A proposal for amendment must be initiated by the Dail. It must be passed by both Houses and then submitted to a Referendum where it must be approved by a simple majority of the votes cast.

The judiciary is represented by Supreme Court which consists of a Chief Justice and a number of judges appointed by the president. The Supreme Court has both original and appellate jurisdiction. The judges hold their offices for life unless they are removed by resolution passed by both Houses of the Legislature.

The Government of Northern Ireland is carried on in accordance with the provision of the Government of Ireland Act of 1920. It has a bicameral legislature consisting of a Senate and a House of Commons. The House of Commons is composed of 52 elected members and the Senate is composed of 2 ex-officio members and 24 members elected by the House of Commons. The legislative powers are limited to subjects not enumerated in the list of reserved

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Ireland.

and excepted subjects. The executive powers are vested in the King Emperor. There is a Lord Lieutenant who exercises such powers as may be delegated to him. The ministry is composed of seven ministers who are appointed by the Lord Lieutenant and preside over departments established by Act of Parliament of Northern Ireland. The Judiciary consists of a High Court of Justice, a Court of Appeal and a Court of criminal Appeal. Northern Ireland is represented in the British House of Commons by 13 members.

Sec. 56(a). Modern trends in the British Parliament.

The twentieth century is marked by remarkable changes in the activities of different organs of the British Government. In the first place we notice a substantial decline in the powers of the Parliament. In the last century the Parliament could make and unmake the ministries and revise their actions at their sweet will and pleasure ; but this supremacy is no longer enjoyed by the present Parliament. The following factors are responsible for this decline in the power of Parliament. (i) The Parliament Act of 1911 has told upon the power and prestige of the House of Lords by allowing the latter to have only a suspensive veto on the bills passed by the House of Commons, (ii) The unrestricted right of creating new peers has led to the inclusion in the House of Lords of many peers who bear an intimate connection with the party in power. (iii) The strengthening of the party organisation has added to the power of the Cabinet and weakened the position of the House of Commons which cannot by reason of the excessive pressure of business and faulty method of presentation of national budget exercise any effective control over public bills and money bills. (iv) The private members who are expected to criticize the activity of the Cabinet seldom do so because the time allotted to them is too short. Again, discussions are often terminated with the aid of closure and guillotine. (v) The bill of a private member has little chance of success unless aided by the support of the party in power. (vi) The recent rise of allowance of a member of Parliament is another factor which makes the member dependent on the party for the security and success in the next election. (vii) The mass consciousness and the political awakening has made the Electorate more powerful and the Members of the Parliament have often been found to seek for mandate from the electorate and to regulate their action with reference to such mandate. (viii) The confidence of the Parliament is now implemented by the confidence of the people in keeping the Government alive. This was proved clearly during the last Great War when Mr. Chamberlain had to make room for Mr. Churchill.

Questions and Answers.

Q. 1. Describe the position and powers of the crown in the British Political System. (C. U. 1934, 1944, Punj. 1939, Ag. 1939).

Ans. See Sec. 11.

Q. 2. Discuss the effect of the Parliamentary Act of 1911 on the position and powers of the House of Commons. (C. U. 1934, Ag. 1943).

Ans. See Sec. 19.

Q. 3. Discuss the essential features of the Cabinet system of Government as it obtains in Great Britain. (C. U. 1935, All. 1943).

Ans. See Sec. 36.

Q. 4. Describe the compositions and function of the House of Lords. (C. U. 1937, Punj. 1937).

Ans. See Secs. 25 and 27.

Q. 5. Describe the present constitutional status and powers of the English cabinet in relation to both the Crown and Parliament. (C. U. 1938).

Ans. See Sec. 38.

Q. 6. Explain and illustrate with reference to condition in England, what are meant by the Law of the Constitution and the convention of the Constitution. (C. U. 1939).

Ans. See Sec. 6.

Q. 7. Explain the difference between the Ministry and the Cabinet of England. What is meant by the principle of ministerial responsibility there? (C. U. 1939, Mad. 1936, Ag. 1943).

Ans. See Secs. 37 and 38.

Q. 8. Discuss the position of the Cabinet in England. To what extent has the Cabinet usurped the functions of Parliament? (C. U. 1942; Pat. 1939; Andhra, 1937).

Ans. See Secs. 42 and 47.

Q. 9. Write a short note on the function and power of the Speaker (C. U. 1930; Pat. 1934).

Ans. See Sec. 11.

Q. 10. What constitutes the Executive in England? Describe its relation to the Legislature. (C. U. 1945).

Ans. See Secs. 34 and 42.

Q. 11. Give an account of the system of local Government in England. (Punj. 1939).

Ans. See Sec. 53.

Q. 12. Discuss the role of the Cabinet in the English system of government. What is its relation to the Crown and to the Parliament. (C. U. 1948).

Ans. See Secs. 41 and 42.

Q. 13. Explain the following statements :—

(a) The king never dies ; (b) the king can do no wrong.
(C. U. 1947).

Ans. See Secs. 8 and 9.

CHAPTER XXIV

THE GOVERNMENT OF FRANCE

Sec. 1. Historical.

France was originally a duchy under the Duke of Paris ; but gradually as the Dukes of Paris extended their authority France came to include Normandy, Brittany and several other duchies. The ancient France had been subject to the invasion of many conquerors who established their kingdom and ruled France for a considerable period of time. The Merovingian dynasty reigned for sometime and this was followed by another new dynasty known as the Carolingians. The next French dynasty was established by Huger Capet who was at first a feudal noble. The system of monarchy reached considerable development during the reign of Philip Augustus who managed to drive away the English from France and established a centralised form of Government in France. The kingship became much stronger under Louis IX and his grandson Philip the Fair. During the reign of Philip the Fair the State-General was constituted in which the nobles, clergy and commons were represented. The State-General advised the king in all matters in which he sought its advice. After the death of Philip the Fair the royal powers ceased for a period of time till it was re-asserted by Louis XI. Further centralisation of power was effected during the reign of Louis XIII and Louis XIV when the Intendant came to supersede the powers

The adminis-
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Ancient
France.

The State-
General.

of provincial governor. The Intendant derived appointment from the king and all provincial officers were subordinate to him. Louis XIV was followed by Louis XV whose tyranny and oppression sowed the seeds of rebellion in French soil. The revolution that began in 1789 gave a death blow to the existing organisation of government and new constitution was drawn up by the Constituent Assembly. This could not bring peace. This constitution was replaced by a new constitution framed in 1791 which provided for a responsible ministry and a single legislative chamber in which men of property were alone represented. The constitution could not live long and the First French Republic was established in 1793. The constitution could not be operative because France came to be ruled by Robespierre who occupied the position of a dictator. Between 1795 and 1799 France was

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ment of
Napoleon.

governed by the Directory or the plural Executive of five members chosen by the Legislature which consisted of two houses. The Directory, again was succeeded by the Government of

Napoleon. He began his career as the first consul and in 1804 he became the Emperor. Napoleon divided the whole of a France into a number of departments and set up single executive officials assisted by advisory councils. The First Empire established by Napoleon came to an end in 1814-16. The Bourbon Dynasty was restored to power and ruled France for a period of time in accordance with the provisions of a new charter containing all the written and un-written constitutional laws of Great Britain. The Revolution of 1830 established the authority of Louis Philippe of the House of Orleans. This monarchy continued till 1848 when the Second Republic was established as a result of a revolution. This Republic provided for a powerful president and a body of ministers to be chosen by him. The constitution came to be based on the theory of separation of powers. The Legislature came to consist of a single chamber. This Republic continued in existence till 1852 when Louis Napoleon managed to get himself elected as an Emperor. In this way the second Empire was established and Louis Napoleon came to the throne as Napoleon III. He adopted a policy of absolutism which ultimately led to the Franco-Prussian war. The war crushed the power of Napoleon III and ultimately established the Third Republic in France.

[The last Great War in which France had to accept the terms dictated by Hitler on the 21st June, 1940 put an end to the sovereignty of France and brought about a suspension in the operation of its constitutional machinery. France had been divided into two parts—occupied and unoccupied France. Unoccupied France was governed by a Cabinet with Marshall Petain at its helm. The seat of the government was at Vichy. With the defeat of Germany France regained her freedom and Marshall Petain became a war criminal.]

Sec. 2. The Constitution of the Third Republic : The Constitution of the Fourth Republic.

The Constitution of France was drawn up by the National Assembly which was representative of all the parties. It was the outcome of the laws passed respectively on the 24th February, the 25th February and the 16th July, 1875. The Law of the 24th February, 1875 gave the constitution of the Senate, the law of the 25th February prescribed the mode of appointment of the President and the term of his office and the Law of the 16th July settled the relation between the public powers. The constitution was amended by the Act of 1881. The constitution thus amended embodies rules for the organisation of different branches of government.

The defeat of Germany in the last Great War liberated France from the military control of Germany. Following such defeat the Fourth Republic was established and new election for a Constituent Assembly took place. This Constituent Assembly drew up the present constitution in 1946. This constitution was approved by Referendum. This constitution provides for a constitutional committee to review all Acts passed by the National Assembly. It also provides for an Economic Council for examining draft legislation.

Sec. 2(a). The Characteristics of the French Constitution.

The Constitution of France has the following characteristics :

The Chief Executive head is elected.	First, it is republican both in form and spirit. The chief executive head is the President of France who is elected by the National Assembly ; he holds his office for a period of seven years. This president is a titular figure-head and occupies a position similar to that of the English monarch. Secondly, the government of France is unitary in character. The powers of control are vested in one central organisation consisting of a single executive and a single Legislature.
Unitary constitution.	

The constitution is partly flexible and partly rigid.	Thirdly, the constitution is partly flexible and partly rigid. A distinction is drawn between the constitutional laws and the ordinary laws and the constitutional laws are amended not by the ordinary Legislature but by a joint sitting of both Houses of the Legislature, known as the National Assembly. The procedure is merely formal and can be easily adopted. The constitution, then has to be submitted to the Referendum.
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Fourthly, the constitution is mostly written and partly unwritten. The constitution is not an exhaustive document and remains silent on many important points. This has facilitated the growth of many important conventions and traditions. The French constitution derives its source not merely from the constitutional laws but also from the vast body of organic laws, ordinary laws and customs.

Fifthly, the constitution provides for a system of responsible government in which ministers remain in office so long as they can command the confidence of the Legislature and have to give effect to the will of the Legislature. This responsibility of the ministers to the Legislature leads us to the irresistible conclusion that the French constitution represents a compromise between Republic and Monarchy.

Sixthly, the constitution does not recognise an equality of status. It has made provision for a separate tribunal by which officers are tried for offences committed by them in their official capacity.

Seventhly, The French Legislature is like the British Parliament supreme in this sense that its enactments go unchallenged in the ordinary courts. The French Judiciary is not competent to declare the laws of the French Parliament as *ultra vires*. There is however a constitutional committee to review all acts passed by the National Assembly and to see that they are not inconsistent with the provisions of the constitution.

Eighthly, the new constitution provides for the formation of the council of the French Union consisting of the President of France, Haut Conseil and The Assembly. The Haut Conseil will consist of the President, delegates from the French Government and the Representatives of each of the Associated States. The Assembly will contain members one-half of whom will be elected by the French Parliament and the other half will represent the departments and territories overseas.

Sec. 3. The Executive.

The chief executive head is the President who is elected for seven years by a majority of votes in the National Assembly and the Council of the Republic sitting together for that purpose. He is re-eligible for any number of terms. For this reason the President of France is the creature of the Legislature. He neither rules nor governs ; He gets a fat remuneration which amounts to 36 lakhs of Francs inclusive

The President is the creature of the Legislature.

of household and travelling allowances. He is the titular head and his powers are exercised by the ministers who are responsible to the Legislature. Like the English King he cannot be held responsible for his actions and this is the reason why no decree of the President is valid unless it is countersigned by the ministers. He possesses no veto on legislation and can send back a measure for reconsideration. If the measure is again accepted by the Legislature he cannot but give effect to it. He has power to issue ordinances.

Being the head of the Executive the President of France exercises certain executive powers. He appoints the ministers and all other important public officers. He is the President of the Council of ministers and when possessed of a strong personality can greatly influence the general policy of administration. He can adjourn the chambers for a period of one month, but not more than twice during the session. He can summon the houses of Legislature on extraordinary occasion and can close their sessions after they have sat for five months. He has command over the Army, the Navy and the Air-force. He can declare war with the consent of the Legislature, can send and receive ambassadors and consuls and make treaties with foreign powers; when the treaties relate to peace, territories of France or the status of the French people in foreign country they must be ratified by the Legislature. He can grant pardons. He presides at national solemnities. All these powers of the president are exercised on the advice of ministers. Every male citizen who does not belong to the royal families that previously reigned in France is eligible for the Presidency. He is not amenable to the jurisdiction of ordinary court. He can be impeached for high treason by the National Assembly and tried by the High Court of Justice set up by the National Assembly, which may inflict punishment.

Although the French President is not an active force in the Government of the country yet we cannot dispense with his service for following reasons:—(a) he is the symbol of unity, (b) his voice counts much in times of national calamity, (c) the choice of minister cannot be conveniently made by any other agency, (d) he renders valuable services to the country by exerting his influence on the Council of ministers and by effecting treaties and settlement.

Sec. 3(a). The French President as Compared with (i) the American President, (ii) with the King of England.

The President of America enjoys greater independence and is an active force in the administration. He is elected by the people

while the French President is elected by the Legislature. Although like the American President the French President is legally irresponsible but this irresponsibility is only nominal in view of the fact that his acts require the counter-signature of a responsible minister. The President of America on the other hand is truly independent of the Legislature and is not answerable to the Legislature for his acts. The Ministers of U.S.A. unlike the ministers of France are the servants of the President and owe no responsibility to the Legislature. The President of U.S.A. has an effective veto power while the President of France has no veto. The French President has power to summon, adjourn and prorogue the Houses of the Legislature under certain conditions. The American President has no such power. The French President can be impeached by the National Assembly for high treason only and may be convicted by the High Court of Justice while the American President can be impeached for treason, bribery and other high crimes and a two-thirds majority in the Senate is required for his conviction. The President of U. S. A. governs but does not reign while the French President neither reigns nor governs.

When compared with the king of England the French President exhibits the following points of similarity. Like the king of England he is a figure head. The policy of administration is formulated by the ministers who for all practical purposes rule over France. He is immune from any legal liability for his acts and for this reason every act or decree of the President must be counter-signed by a minister who is held responsible for it. This is exactly the position of the constitutional monarch of England who can do no wrong.

Nevertheless the President of France can not claim the proud position of the king of England who occupies a hereditary throne of great pomp and grandeur. Thus the king of England reigns but does not govern.

Sec. 4. The Cabinet and the Council of Ministers.

The ministers who hold the real executive power in France are appointed by the President generally from the members of the Legislature. The members are chosen from the different parties and not from one particular party as in Great Britain. They form the Cabinet as well as the Council of Ministers. Although the Cabinet has the same personnel as the Council of Ministers, the former is to be distinguished from the latter on the following points :—

(1) As members of the Cabinet the ministers have a right to attend the meeting of the Legislature and to take share in its debate while as a Council of Ministers, they represent the adminis-

trative body exercising general supervision over the government. The Council of Ministers of which the Chairman is the President of the Republic is concerned with administrative details while the Cabinet of which the Prime minister is the President is chiefly concerned with formulation of broad policies of Government and with Parliamentary tactics.

(2) As a Council of Ministers the ministers are the creatures of the President while as Cabinet of Ministers they control the actions of the President.

(3) Like the British Cabinet the French Cabinet is not recognised by law but the Council of Ministers has a legal recognition. In case of resignation, illness or death of the President the Council of Minister exercises the function of the President till the election of the new President.

(4) Unlike the British Cabinet the resignation of the ministers is not followed by the appearance of a new set of ministers. On the resignation of ministers a mere re-grouping takes place.

Sec. 5. The Responsibility of the Ministers.

In France as in England the Executive is responsible to the Legislature. The constitution of France provides that every act of the President shall be countersigned by a minister who shall be held responsible for the act of the President. The Cabinet is composed of ministers who hold important offices and can continue their office so long as they can command the confidence of the Legislature. This responsibility is the creation of law and is not, as in England a matter of convention. This responsibility has reference to both the chambers. This responsibility again may be either individual responsibility or collective responsibility. The ministers are collectively responsible for the general policy of administration and individually responsible for personal acts. The collective responsibility has a different implication in France and does not prevent a member of the Cabinet from holding a view which is different from that of the Cabinet and from voting independently. The team spirit is absent in the French Cabinet. There are four different ways in which this responsibility of the Cabinet can be enforced. Any member may inform a minister that he will ask him a question as to the affairs of the State and if the minister concerned gives permission, the question is addressed to him. Another practice consists in challenging the policy of action of the Cabinet as a whole without any notice. This is then followed by a debate and a vote of confidence or want of confidence. This latter method is known as interpellation and differs from ordinary questions for

Three different ways of enforcing the responsibility of the ministers.

the following reasons:—(i) It gives rise to a general debate, (ii) it must be preceded by an application to the President of the Chamber of which the person who wants to address the interpellation is the member, (iii) the minister concerned has to give a reply, (iv) the reply is followed by vote of confidence or non-confidence. Formerly the ministers were forced to resign after an adverse vote which followed such an interpellation; under the existing constitution the minister is not bound to resign after an adverse vote on interpellations. The third method is the appointment of a committee to examine the acts of the ministers. There is one more potent method which consists in withholding supply of funds.

Sec. 6. The Instability of the French Ministry.

The interpellation was the most important cause of instability of the French ministry. The Ministers were to resign in a body when their policy of administration was challenged all on a sudden and a vote of non-confidence was passed by either House of the Legislature. Another cause of the instability of the French ministry is the multiple party system which prevails in France. No one party can claim majority in the Legislature, but a responsible government can scarcely exist without a majority in the Legislature to support it. This majority can be secured only when two or more parties agree to combine. As soon as there is any disagreement among the combined parties the ministry loses majority and has to resign. This is the reason why the French Cabinet changes so frequently to the detriment of the political interest of the State. The party organisation is also very weak. The member of a particular party can easily cut off his party tie and become member of another party which entertains almost similar views. Partly on account of the multiple party system and partly on account of insufficient organisation of parties the Cabinet of France which consists of heterogeneous elements can scarcely secure unanimity among the members. One more important cause is that the Executive has practically no power of dissolving the Lower house. The President can dissolve the Lower House only with the consent of the Upper House and there is no guarantee that this consent will be given. For this reason the Executive cannot as in England command support by threatening a dissolution of the chamber which means a loss of seats to the members of the Legislature.

Though the Executive has little control over the Lower House, the latter has a more stringent control over the former and often interferes even in the details of administration.

Another cause of instability of the French Ministry is the constitutional provision which makes the Ministry responsible to

both the chambers of the Legislature. In actual practice the Ministry has often remained in office in spite of an adverse vote in the Upper House but the hostile attitude of the Upper House makes the Ministry unpopular and compels the latter to resign.

The appointment of commissions and committees consisting of experienced statesmen of the country seriously affects the prestige of the ministers. These commissions provide the Legislature with expert advice and undermine the influence of the members of the Cabinet in the Legislature.

Sec. 6(a). The Ministry of France as Compared with the Ministry of Great Britain.

Both in Great Britain and in France the real Executive is the Cabinet which consists in each case of a number of ministers, but the Cabinet of France differs from that of Great Britain in the following respects :—

- (1) The Council of Ministers has a legal status and is recognised as such by the constitutional laws of 1875. The French Council has a legal status. These laws provide that the ministers are collectively and individually responsible to both the chambers for their acts. In Great Britain the Cabinet is an extra-legal body and the responsibility of the Cabinet to the Legislature is based upon a convention which is scrupulously obeyed.
- (2) A member of the French Ministry is not required to be a member of either House of the Legislature. Though not a member of either House he has a right to attend sessions of both the chambers and to be heard when occasion arises. In Great Britain a minister must secure a seat in either House within a short time in order to maintain his position. Again, he can only address the House of which he is a member.
- (3) The French Prime Minister occupies a position inferior to that of the British Prime Minister. This is because the ministers in France belong to different parties which agree for a period of time to form the ministry. The Position of the Prime Minister. ministers are often so many party leaders and their selfish interest may prompt them to remove the prime minister by withholding their support and form a new ministry with a new prime minister.
- (4) In France every minister receives the same amount of salary (180,000 Francs), while in Great Britain the salary of a minister varies widely and depends upon the importance of the department placed in his charge.

The appointment of the Prime Minister involves a more complex procedure than that followed in England. In England the king sends for the Leader of the Party and he is appointed prime minister. In France the President designates the prime minister from among the leaders of the different parties. He is then to approach the National Assembly with his policy and programme. If he wins the confidence of the National Assembly as expressed by public ballot and by an absolute majority he and his colleagues are formally appointed by the President by a decree.

(5) The members of the French Ministry are responsible to both the Houses of the Legislature. The responsibility is collective when the general policy is involved. In a case where the action of a particular minister is challenged he has to resign and his resignation does not lead to the resignation of the entire ministry. In Great Britain the ministers are responsible to the House of Commons alone and their responsibility means a collective responsibility and entails a breakdown of the ministry even when a particular minister loses confidence of the House.

(6) Collective responsibility has not the same meaning in France as in Great Britain. A member of the ministry is not completely subordinate to the Cabinet, but can vote or speak independently. When a ministry has to go away the ministry that comes into existence may contain most of the members of the out-going ministry. Again, the solidarity of the British Cabinet cannot possibly exist in a Coalition Cabinet of the French Republic and it often happens that a particular minister is forced to resign while his colleagues remain in office.

(7) The Cabinet of France is controlled by the Lower Chamber but it cannot like the British Cabinet control the chamber by threatening a dissolution. In Great Britain when the Prime Minister fails to command a majority he may approach His Majesty and advise him to dissolve the House of Commons. The French Prime Minister enjoys no such power. The Constitutional Laws authorise the President to dissolve the National Assembly when two ministerial resignations have taken place within a consecutive period of eighteen months but not within 15 days after the appointment. When these contingencies happen the council of ministers may dissolve the National Assembly after giving notice to the President.

Sec. 7. The Legislature.

The Legislature of France consists of two chambers—the Council of the Republic and the National Assembly. The Council

which is the upper chamber is composed of 315 members of whom 200 are elected by the electoral college composed of (i) the Deputies of the Department, (ii) the members of the General Council of the Department, (iii) the members of the Council of all arrondissements and (iv) the delegates sent by the municipal councils of all Communes. About 70 members are elected from other overseas territories under the supremacy of France and the remaining members are elected by the National Assembly according to the system of proportional representation. The members must be at least 40 years old ; they are elected for nine years one-half retiring every three years. A system of indirect election has been adopted in France with a view to ensuring the presence of experienced members in the Council.

The Second Chamber has now lost its former position. It has been reduced to the status of a mere advisory body with power to examine and report on bills which passed the first reading of the lower chamber. It can initiate bills with the exception of Money Bills which must originate in the lower house. It cannot veto bills passed by the National Assembly.

The Council of the Republic can by absolute majority of total membership urge that any law which is deemed unconstitutional may be referred to the constitutional committee. The council has also to approve the draft Bill containing amendments to the constitution.

Sec. 8. The National Assembly.

National Assembly is the more democratic and powerful chamber. It consists of members representing the various departments constituted for the purpose of election and the colonies which France possesses. The Assembly at present consists of 619 members. The Assembly elects a President and two vice-Presidents. Almost universal manhood suffrage prevails in France and persons who are of twenty-one years of age, not in actual military service and not otherwise disqualified are entitled to cast their votes. Certain persons such as minors, women, bankrupts, criminals and those engaged in military or naval services are excluded. The voters should prove at least six months residence in France before they are allowed to vote. The system of election is by *Scrutin d'arrondissement* i.e., by single member constituencies. The principal dependencies including French possessions in India are entitled to send representatives. A person cannot be chosen as a member unless he is of twenty-five years of age. The members have a life of four years and

The indirect election and the electoral college.

Almost universal suffrage prevails in France.

Qualifications.

are given the same allowance (27,000 Francs annually) as the members of the Upper House. They sit in the following groups—Right, Centre and Left. The House has its sessions fixed by the constitution and must meet on the prescribed date. It has not to depend upon the whims of the Executive. It can be dissolved before the expiry of its term if the President so desires and if the Council of ministers requests such dissolution on the ground that within the consecutive period of eighteen months two ministries have resigned but not within fifteen days from the appointment. The Session of the chamber commences at the summoning of the French President but if the President does not so summon, the chamber meets automatically on the second Tuesday of January.

The Lower Chamber is more powerful than the Upper Chamber. The Executive is practically responsible to this chamber and can continue so long as it can command the confidence of this chamber. The chamber controls the Executive through its committees. The bills proposed by the ministry are scrutinized and freely amended by the committee. The Chamber participates in the initiation of legislative bills and money bills can originate only in this house. The Lower House is entrusted with the making of laws. The constitution makes it quite clear that laws are to be passed by the National Assembly. The Council of the Republic acts purely as an advisory body without any power of vetoing bills. The Council can examine bills after the first reading in the Assembly and has got to submit its report within two months after the receipt of the bills. The Assembly may reject the amendment if any made by the Council. This chamber can also impeach the presidents and the ministers.

The President of the Chamber enjoys usual powers of presiding over the meeting and maintaining discipline and order within the chamber; unlike the Speaker of the House of Commons he participates in debate, exercises his vote and remains a party man.

The President of the National Assembly promulgates law when the President of the Republic fails to do the same within the stipulated period. He holds a seat in the constitutional committee. He exercises the power of the President of the Republic when the latter is unable to discharge his duties. Unlike the British House of Commons The National Assembly is the master of the Cabinet with full power to make and unmake ministers. It has strict control over the National accounts. It can grant amnesty and declare war on the previous advice of the Ministry. It can impeach the President and the ministers.

Sec. 8(a).. Process of Legislation.

When a bill has been introduced in either Chamber it is

referred to a special committee for consideration. There are twenty standing committees in the Lower house and eleven bureaux. The Finance Committee of the lower house are elected for controlling the financial legislation. These committees are elected every year by the groups in proportion to the numerical strength. The Finance Committee consists of 55 members while other committees consist of 44 members. Each Committee has got its president and a reporter. The reporter plays an important part. He draws up the report in the light of directions given by the Committee and pilots the bill through the chamber. In England the task of piloting rests in the hand of the ministers concerned. The President of the Lower Chamber settles as to which commission a particular bill will go ; on receipt of the report of the commission the bill is taken up by the Chamber for discussion. The Rapporteur then explains the principles of the bill but no amendment is allowed at this stage. If the Chamber votes favourably the bill enters the second stage when discussion on principle takes place. At this stage a question may be raised as to the constitutionality of the Bill and vote may be taken on the point. An affirmative vote on this point is followed by another vote for discussing the Bill clause by clause. When the House finds a majority in favour of such discussion each and every section of the bill comes under discussion and any amendment may be moved at this stage. The bill is then finally put to vote and if passed by the Chamber it is then sent to the Upper Chamber where it has to pass through the same procedure. If the Upper Chamber agrees with the Lower Chamber the bill finds no difficulty on its way. If the Upper Chamber does not so agree the Bill becomes an act if the Lower House again passes the same by an absolute majority. The consent of the President is not required for the enactment of any law. His function is merely to promulgate the laws. If he does not so promulgate, the law is promulgated by the National Assembly. The absence of an effective party organisation in France has enhanced the powers of the Committees. They are bold enough to challenge the authority of ministers and the Houses are found to regulate their legislative activity in accordance with the authoritative opinions of these committees. The Executive has little or no control over finance which is left entirely at the discretion of the Finance Committee. This committee can refuse the demands of ministers. The result is that the ministers cannot give effect to their programme unless they can influence the members of the committee to supply necessary funds. Again, the right of the committee to add new matters in the budget leads to extravagance in public expenditure. The Upper Chamber cannot add new items in the budget but it has every right to reject or reduce items of taxation or appropriation as voted by the Lower Chamber.

The committees of the French Chamber of Deputies compare favourably in respect of their strength with the committees of the American Congress. As in U. S. A. the bills are referred to them before any discussion takes place in the chamber and for this reason they can give any shape to the bill. The Committees of the House of Commons do not enjoy such wide powers.

Sec. 8(b). Privileges of the Members.

The members of the Legislature enjoy certain privileges.

Privileges of the members.	They cannot be prosecuted for opinions expressed and votes cast by them in the performance of their duties. Again, no member can be arrested or prosecuted for any offence or misdemeanour except upon the authority of the Chamber of which he happens to be the member.
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Sec. 8(c). The Party Systems.

In France we find a large number of parties. These parties often do not exhibit practical difference in their policies and can for that reason combine with groups having similar objectives. Thus the Conservatives have joined with the National Republicans, the Liberals with the Democratic Alliance party. These two groups form the parties of the Right while the Radical Socialists, the United Socialists and the Communists are regarded as the parties of the Left.

Unlike the party organisations in England and U. S. A., the party organisation in France is still in a rudimentary stage. There is no system in it. The organisation, if any, manifests itself on the floor of the Legislature and is not country-wide as in England and U. S. A. The members again can freely move from one party to another by reason of subtle theoretical differences in policies.

The existence of multiple parties in France hampers greatly the administration of the country on democratic lines. It accounts for ministerial instability. As no one party can command an effective majority, we find in France a Coalition Cabinet which has an inherent weakness and a consequent short life.

Sec. 9. The Judicial System.

The Judiciary of France consist of different kinds of Courts. viz., (1) The Ordinary courts, civil and criminal and (2) The Administrative courts. The lowest of the ordinary courts is the Court of the Justice of the Peace who has jurisdiction both civil and criminal over a particular canton. The civil jurisdiction of this court does not exceed a claim of 300 francs while the criminal jurisdiction covers offences punishable with a	
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fine of not more than 15 francs or with an imprisonment not exceeding five days. Besides these strictly judicial functions there is one more important function which these Justices of Peace have to perform. This function is to bring about reconciliation between the parties. The Justices of Peace are appointed by the President of the Republic on the advice of the Supreme Magisterial Council.

The next higher grade of court is the court of Arrondissement having jurisdiction both original and appellate in the territorial limits of a department. It is constituted by a President and two other Judges. While exercising criminal jurisdiction this court is known as the Correctional court. The next higher court is the Court of Appeal having jurisdiction both civil and criminal over an area comprising one to seven Departments. There are 27 such Courts in France. Each of these Courts of Appeal consists of at least five judges. This court has a President and is divided into three chambers :—(1) a Civil Chamber, (2) a Criminal Chamber and (3) an Indictment Chamber. It hears appeal from the lower courts and has original jurisdiction in the matter of discharge of bankrupts and several other matters. No appeal lies from its decision on questions of fact while on questions of law an appeal to the Court of Cassation is competent.

Another kind of court which occupies an important place in the Judiciary of France is the Court of Assizes. This court is held every three months for the trial of serious criminal cases. It administers justice with the help of the jury. This court consists of a President and three Judges one of whom must be a judge of the Court of Appeal.

The highest Court in France is the Cassation Court which consists of three Presidents of chambers, forty-nine Judges, a Prosecutor-General and six Advocates-General. It has three sections—(1) The Court of Petition. It consists of a president, a judge from the court of Appeal and two more judges. (2) The Civil Court and (3) The Criminal Court. This court hears appeal from the lower courts. Each of these sections is presided over by a President.

Besides the above courts, there are few commercial courts which have been created for the trial of commercial cases.

The Judges of France are appointed by the President on the advice of the Supreme Magistrate Council. They hold their office during good behaviour and can be removed only by the decision of the Cassation Court otherwise known as the Chamber of Requests.

The Judges of the Court of Cassation and the Justices of Peace may be removed by the President of France.

There is one more organisation which deserves notice. This is the Supreme Magisterial Council consisting of the President of France and 14 members. The President acts as the Chairman. The members include the Ministers of Justice, 4 judges elected for 6 years, 6 members elected by the National Assembly and two members nominated by the President from the legal profession.

Sec. 10. The French Judicial system as Compared with the English System.

The French judicial system differs from the English system in the following points :—(i) in France there is a provision for the separate trial of officers for offence committed by them in the discharge of their official duties, (ii) in France the same court is associated with both civil and criminal power, (iii) the court in France consists of a number of judges while in England the lower court usually consists of a single judge; (iv) The French judges are not bound by precedents while the English judges must respect them, (v) The French courts are local in character. There are no circuit courts as in England. (vi) Judges in France are recruited by competitive examination and are not drawn from the Bar.

Sec. 11. Administrative Court.

In France there is a provision for a separate court for the trial of offences committed by the executive officers in their official capacity. These courts are known as Administrative Courts. The officers are immune from the jurisdiction of ordinary court for any wrong done by them in their official capacity. In this respect it differs from the United Kingdom where every one is amenable to the jurisdiction of the ordinary courts. The Administrative Courts comprise (i) The Council of State for the whole of France and (ii) one Prefectorial Council of State for each department. These departmental Councils are otherwise known as Regional Councils. There are as many as 22 Regional Councils each consisting of a President and four councillors appointed by the Minister of Interior. These Councils try suits brought by private individuals against subordinate officials. From the decisions of these courts appeal lies to the council of State which represents the highest Administrative Court of France. This Court also has original jurisdiction to decide cases. The Minister of Justice presides over the Council of State which consists of 39 Councillors nominated by the President. The Council of State has other functions as well. It authorises the issue of ordinances and gives advice to certain administrative departments. It can set aside the decrees promulgated by the President and other executive officers on the ground that they are *ultra vires* or irregular. It has laid down a set of rules which govern the procedure to be followed and

prescribe the rights of private citizens against officials and the liabilities of such officials. These bodies of rules are known in France as *Droit Administratif*. In cases of dispute of jurisdiction the matter is referred to the Court of Conflicts the decision of which are to be accepted as final by the ordinary courts and by the administrative courts.

The Court of Conflict is known in France as *Tribunal des conflits*. This Tribunal now consists of nine members. Three of these members come from Court de Cassation—the highest judicial court, three other members are drawn from the *Conseil d'Etat*—the highest administrative court, two other members are elected by the above six judges. The Minister of Justice acts as an *ex-officio* President. This composition of the *Tribunal des Conflicts* commands respect from the people of France, because it is not likely to encourage executive excesses. In deciding conflicts of jurisdiction this Tribunal is expected to give adequate protection to individual liberty.

It is contended by the English and the American jurists that the system of administrative court cannot guarantee individual liberty. The ordinary courts having no jurisdiction to try the officers the rights and liberty of the citizens will surely be in jeopardy. There is little substance in such contention. The administrative courts on the other hand have been the real guardian of individual liberty and furnish an inexpensive remedy to individuals aggrieved by executive excess. Again, Administrative Law makes the State liable for the offences of its servants and compensation can be easily realised when the officers are found guilty.

Sec. 12. The Local Government of France.

For the purpose of Local Government the whole of France has been divided into a number of Departments, Arrondissements, Cantons and Communes. The Department which is the highest administrative division is placed in charge of a Prefect who is appointed by the President on the advice of the Minister of the Interior and acts as an agent of the Central Government supervising the execution of laws and exercising general control over the officers. He is charged with multifarious duties and is controlled by the Minister of the Interior in the discharge of these duties. Each Department has a General council which consists of representatives who are elected by universal suffrage for a period of six years, one-half of them retiring every three years. Each Canton sends one representative to the Council. The Council holds two regular sessions every year and is entrusted to supervise the work of the Department. It cannot discuss political questions and has little power of originating legislations. It is in

The Department and its organisation.

charge of the property of the department and can authorise the transfer of such property. It authorises the construction of roads, railways and bridges.

The Council has no control over the Prefect. It acts as a Legislature of the Department and makes regulations relating to various subjects of local administration. These regulations again may be disapproved by the Central authorities in Paris. The council is also controlled by the Prefect and cannot take up any question for discussion without his previous sanction.

The Arrondissement is the next important division of local administration. The administrative head of Arrondissement is the Sub-Prefect who like the Prefect, is an agent of the Central Government. It has a council consisting of the representatives of the Canton, chosen by universal suffrage. Its chief function is to distribute the burden of taxation imposed by the General Council among various cantons.

The Canton has no administrative organisations of its own. It represents an area over which the Justice of the Peace has civil and criminal jurisdiction and serves as an electoral district for the election of members to the General Council and the Arrondissement Council. The commune represents the primary unit of the organisation of local government and may be either rural or urban. The administrative head of the Commune is the Mayor who is assisted by one or more Deputy Mayors. The Mayor and the Deputy Mayor are elected from and by the members of the Municipal Council for a period of four years. The Mayor is the representative of the central government and is not responsible to the Municipal Council which elects him. The Municipal Council is elected by universal suffrage. It holds four regular sessions every year. It is responsible for the performance of municipal functions. The meeting of the council is presided over by the Mayor. The Council does not enjoy autonomy in the administration of its affairs. It has to discharge its duties under the strict control of the Prefect in certain matters and in respect of certain other matters it must follow the direction of the Central Government. The Mayor again may be suspended for a month by the Prefect, for three months by the Minister of Interior and may be removed by the President of the Republic.

The income of local bodies is derived from *octroi* imposed on articles and from surtaxes collected by the Central Government for them. The local bodies have no power of taxation.

The French system of Local Government as stated above is highly centralised in character. The Central Government has to maintain its agents in every local organisation and retains strict

control over municipal legislation. The local authorities enjoy little or no autonomy in their spheres of activity and have to carry on administration with fund supplied by the Central Government and in strict compliance with the direction they receive from the latter. The executive heads of the Local Bodies are appointed by the Central Government which retains rigid control over their activities. Such a system cannot create interest in local affairs but makes for uniformity and economy in local administration. In spite of this rigidity of central control the French system has yielded more satisfactory results than the spoils system of America.

It should be noted in this connection that local self-government of the type which prevails in Great Britain and U.S.A. has no support in France. Again no distinction is drawn in France between urban and rural areas.

Questions and Answers

Q. 1. Differentiate between the Cabinet Government of France and that of England. (C. U. 1927; All. 1944).

Ans. See Sec. 3(a).

Q. 2. Discuss the powers and position of the President. (All. 1944).

Ans. See Sec. 3.

Q. 3. Explain how the constitutional amendment can be made in France. (C. U. 1935).

Ans. See Sec. 9.

Q. 4. How is ministry formed in France? How do you account for frequent changes of ministry in France. (C. U. 1936; Ag. 1938).

Ans. See Secs. 4 and 6.

Q. 5. Describe the composition and function of the French Senate. It is said that the French Senate is the ideal second chamber. Do you agree. (Punj. 1939).

Ans. See Sec. 7.

Q. 6. Describe the organisation of parties in France. (All. 1943).

Ans. See Sec. 8(c).

Q. 7. In what respects does the parliamentary system of France differ from that of England? (C. U. 1937).

Ans. See Sec. 6(a).

Q. 8. Explain the difference between the Cabinet and the Council of Ministers in France and examine the character of ministerial responsibility in that country. (C. U. 1938).

Ans. See Secs. 4 and 5.

Q. 9. What are the nature, constitution and functions of the Administrative Courts in France? Indicate the chief merits of the system. (C. U. 1942; All. 1944; Punj. 1942).

Ans. See Sec. 11.

CHAPTER XXIII

THE GOVERNMENT OF GERMANY*

Sec. 1. Historical.

The present constitution of Germany was drawn up after the Great War of 1914 which crushed the power of the German Emperor and established a system of Republican form of Government. An account of old system of Government which prevailed in imperial Germany will be useful to the students inasmuch as it will make them familiar with a type of federal and non-responsible Government.

The Old German Empire consisted of duchies, principalities and cities, each of which was almost independent of the Central Government. The king used to rule through local officers known as *Grafs* and appoint *Mark Grafs* to defend the frontiers. Charles the Great died leaving successors who failed to bring the whole of Germany under control and thereby facilitated the growth of many principalities. Several independent cities also made their appearance with the growth of trade.

Among the various states of Germany, Prussia occupied a prominent place. Frederick William and his successors added to the size of the State by extending their authority over many territories.

*With the defeat of Germany in the recent European war Germany has ceased to be an independent nation. The allies now control the administration of Germany and it is not settled whether Germany will be allowed to regulate her own affairs.

Napoleon who intended to curtail the power of Prussia split up Prussia into two parts and brought all the states under the Confederation of Rhine. This confederation continued till 1813 when the effort of Napoleon fell. In 1815 another Confederation was formed under the leadership of Austria and this included as many as 39 States. The central organ of this Confederation was the Diet which had little real powers and had no independent machinery to enforce its authority. It was not based upon equal representation. Prussia and Austria occupied important places because the former was the permanent president and the latter was the permanent vice-president.

Napoleon's
attempt.

Although the Napoleonic wars fostered the growth of nationality in German people, the process of union was hampered greatly by the quarrel that ensued between Prussia and Austria regarding the leadership. The National Parliament which met at Frankfurt could not effect this union. Then came Bismark who was a Prussian and wanted to see that Prussia should become the leader. He invited Austria to co-operate with him in seizing Schleswig and Holstein but quarrelled with it over the division of these two territories. As a result of this quarrel war was declared with Austria in which the latter was defeated. In this way the leadership of Prussia was established. Bismark then created the North German confederation with the king of Prussia as its president. The legislature of this confederation consisted of two houses—the Reichstag and the Bundesrath. The Reichstag was composed of representatives of the people while the Bundesrath represented the States. The Confederation could not comprise the States lying to the south of the Maine because France compelled Bismark to stick to the territories on the north of the Maine. During the Franco-Prussian War the States on the South of the Maine gave up their prejudices and came to form a united Germany with the States of the North German Confederation. Thus in 1870 the new German Empire was formed and the President of the Confederation became the German Emperor. In 1871 the Constitution of Germany was drawn up and this lasted till 1918 when it was replaced by a constitution based upon individual liberty, equality and justice.

Bismark and
the North
German
Confederation.

Sec. 2. The Old German Empire: its Constitution.

The Old German Empire had Federal Constitution. It was composed of 4 kingdoms (Prussia, Saxony, Bavaria and Wurttemberg) and several duchies, principalities and free cities. Austria was not a member of this union. Prussia had a leading position in this Union. It

Prussia had
a leading
position.

contained a large population and for that reason had as many as seventeen votes in Upper Chamber (Bundesrath) and had the Chairmanship of the standing committees of that Chamber. This enabled Prussia to prevent any change in the constitution that affected its interest. The King of Prussia was the Emperor of the Federal union and Prussia had a supreme voice in fiscal system and in the administration of the Army and the Navy.

This Federal union differed considerably from the federal union of the United States. There was no equality of representation because the States were unequal in area, population and privilege. Prussia, we have seen, controlled the union and had a supreme voice in the administration. Again, the federal government in Germany had extensive powers of legislation. Its power was not confined to federal laws and to subjects which naturally fell within the domain of the Central Government. It interfered in matters in which the States were concerned. The Executive powers of the Federal Government were however limited.

The Legislature of the German Empire consisted of two houses—the Bundesrath and the Reichstag.

The Bundesrath was composed of delegates of the constituent States. The Bundesrath was not purely a legislative body. It combined the functions of the Executive, the Legislature and Judiciary.

The lower house of the Old German Empire was the Reichstag. It was composed of members elected from single electoral districts into which the empire was divided for the purpose of election. The power of the Reichstag could not be ignored. No bill could be passed without its consent.

The executive head of the Union was the king of Prussia who was designated as the Emperor of Germany. He enjoyed considerable powers and represented the Empire in all its relations. He was the head of the Army and the Navy and controlled foreign policy of the Empire. He could make treaties and declare war with the consent of the Bundesrath. He appointed the Imperial Chancellor and other high officials. He could summon and close the Bundesrath and with the consent of the Bundesrath could dissolve the Reichstag. He had neither initiative nor veto over legislation but he exercised control over legislation through the Imperial Chancellor whom he appointed. The Imperial Chancellor was a Prussian delegate having the control over the votes of Prussia. The negative vote of Prussia was sufficient to prevent all changes in

The Imperial Chancellor.

the constitution and all laws concerning the army, navy and taxation. Again, this Imperial Chancellor was the only federal minister. He was responsible to the Emperor and did not resign when he lost the confidence of the Reichstag. He was the President of the Bundesrath and all communications from the Reichstag passed through his hands. He had control over the various administrative departments and supervised the administration of Imperial laws in the component States.

The Imperial
Court of
Appeal.

At the head of the Judiciary was the Imperial Court of Appeal. The jurisdiction of this court was mainly appellate but it had original jurisdiction in cases of treason against the Empire.

Superior
Adminis-
trative Court.

There was a system of administrative courts. The chief administrative court was the superior Administrative Court in Berlin.

Sec. 3. The Present (before defeat) German Constitution.

The present constitution of Germany dates from the 31st July, 1919. The new Constitution of Germany was drawn by the National Assembly which was summoned by the Council of Peoples' Commissioners when the Great war was over. The Emperor of Germany and the Kings of component States abdicated and were driven out and a republican system of Government was introduced in Germany. The present German constitution also provides for a federal organisation but in this federation the unitary element is very strong. This is because the constitution authorises the Reich to compel the recalcitrant States to act in accordance with the provisions of the constitution. The States are also required by Art. 14 of the constitution to give effect to federal laws. The German Federal Government has been given jurisdiction over important subjects like foreign relation, coinage, defence, posts, telegraphs and telephones, internal and external trade, nationality, and several other subjects of national concern. It has concurrent jurisdiction with the States in subjects, which are ordinarily left to the States for administration. These include police, sanitation, industry, transport, civil and criminal law. In these spheres the States can make regulation in the absence of regulation made by the Federal Government. This has strengthened the grip of the Federal Government over State Governments. The constitution embodies rules governing the re-organisation of government. The constitution also makes provisions for the political and civil rights which the citizens should enjoy under the present form of government. It emphasizes the political sovereignty of the people and lays down that all political authority is derived from the people.

The consti-
tution enun-
ciates the
civil and
political
rights.

In it we find rules for the reconstruction of society and provisions for the system of education and for the creation of an Imperial Economic Council to safeguard the interest of the industry. It also lays down the rights of the labourers. Thus we find that the present constitution is not a mere constitutional document.

With the ascendancy of Nazi party in Germany the constitution of Germany was modified and was given a unitary and totalitarian character. The modern Germany was for a period of time governed by a dictator. The provincial heads got to administer their territories under the control of the regents who were appointed by the leader of the Reich. The seventeen Federated States lost their statehood as a result of the Unification Act of 1933 and was transformed into mere administrative units. The State Legislatures were abolished and the State cabinets came under the control of the Reich Cabinet. The defeat of Germany put an end to the Nazi dictatorship and brought her under the administrative control of the Allies.

Sec. 3(a). The characteristics of the Weimer Constitution.

The Republican constitution which was adopted by the Constituent Assembly sitting at Weimer on July 31, 1919 exhibits the following characteristics :—

(1) It is federal in form but unitary in spirit. This is due to the fact the Federal Government which enjoys exclusive jurisdictions over all important affairs of government and concurrent jurisdiction in regard to certain matters of local concern has also been empowered to intervene in purely local matters with a view to arriving at a uniformity in legislation. The federal government has been authorised to compel the recalcitrant States to discharge the obligation imposed by the constitution. The constitution also makes it obligatory on the States to abide by the laws of the Reich.

(2) The organisation of the States is required to be of a republican character and the Executive must remain responsible to the Legislature.

(3) The constitution emphasizes the sovereignty of the people and makes ample provision for referendum and initiative.

(4) Unlike the constitution of U. S. A. the Weimer constitution has provided for a special court to be constituted by the Legislature for the settlement of disputes between the component units.

Sec. 4. The Federal Executive: The President.

Under the Weimer Constitution the Federal Executive consists of the President, the federal chamber and the Federal Minister.

Every German, whether born or naturalised, of 35 years of age is eligible for the Presidency. The President is elected by the whole German people. The President of Germany is not like the President of France a creature of the Legislature. The people of Germany did not intend to substitute the hereditary Democrat by an elective autocrat, nor did they want a President who would be as powerless as the President of France. The President of Germany is certainly stronger than the President of France. He holds his office for a period of seven years; but he may be removed before the expiry of the term when two-thirds of the Reichstag (the lower house) demands his removal by proposing a recall. As soon this recall is proposed the president is suspended. The matter is then put to the vote of the people. If the people affirm the recall, the President goes out of office and a new President is elected in his place. This rule of the constitution serves as a check upon the arbitrary powers of President and compels him to discharge his duties in accordance with the will of the people. Another provision for check on the arbitrary power of the President is that of impeachment of the president by the highest court of justice. Nevertheless the president of Germany enjoys enormous power. He appoints the Chancellor and the Ministers. He represents the federal government in foreign relations and makes treaties with foreign powers. He is the commander-in-chief of the federation. He can with the consent of the Reichstag take the help of armed forces to enforce obedience of the States to the federal laws. He exercises the prerogative of mercy. He cannot be prosecuted without the consent of the Reichstag. He has little powers in legislation. He may order referendum if the two houses disagree on any bill : but he must order it if the Reichstag demands it by two-third votes and if the houses disagree on a constitutional amendment. The president has the right to declare a suspension of the various constitutional rights of citizens and to introduce a government by virtual dictatorship. He can dissolve the lower chamber. The constitutional provisions as embodied in Art, 48 of the new constitution justified Hitler to combine in himself the two-fold power of the President and the Chancellor of the Reich and to assume dictatorial power. All powers were centralised in the hands of this Leader-Chancellor whose authority could not be challenged. The oath of allegiance also was altered. It ran as follows:—"I swear to be loyal and obedient to the Leader of the German Reich and the people."

The President was called the Leader. Adolf Hitler ruled over Germany as Leader and Chancellor. His tenure was for life and he had power to choose his successor. His will was law. He had

independent power of making ordinances which no court of law could disregard. The enabling Act empowered him to make and enforce treaties with foreign powers without the consent of the Legislature. Hitler thus assumed the position of a magistrate from whom no appeal lay. The defeat of Germany meant an end of Hitlerism in Germany.

Sec. 4(a). • The Cabinet: its Nature.

The Weimer Constitution introduced a responsible form of government. Although the federal president was outside politics, the Federal Chancellor and the Ministers were responsible to the Reichstag and could hold their offices so long as they could command the confidence of the lower house. They must resign if the confidence of the Reichstag was withdrawn by a resolution. The legal irresponsibility of the president was not incompatible with ministerial responsibility in view of the provision that every decree of the president must bear the countersignature of a responsible minister. The policy of administration was enunciated by the Chancellor and the Ministers were to act according to the policy so enunciated. The Chancellor occupied the position of a Prime Minister and was responsible to the Reichstag for the policy he enunciated. He chose his own colleagues and formed with them the ministry or cabinet. The German Chancellor was not bound to consult his colleagues for determining the main lines of his policy for which he alone was responsible to the Reichstag. Within the lines so determined each federal minister had to discharge his departmental duties and he remained personally responsible to the Reichstag for the department placed under his care. He alone was to resign when he lost the confidence of the House. Unlike the French Cabinet the German Cabinet was responsible to the Reichstag and not to the Upper House. The Cabinet Ministers might have seats in the Legislature but they had the right to attend each House.

The Cabinet of Germany was before the ascendancy of Hitler in power as unstable as the French Cabinet. This instability was due not to the absence of an effective party organisation. The parties were well-organised but they were numerous and no one party could command absolute majority. The result was that like France, Germany had coalition ministry. Another cause of instability was the extraordinary power which the President enjoyed in the matter of dissolution of the Lower House. With the advent of the Nazi party in power and with the emergence of dictatorship in Germany the Nazi party came to be the only political party in Germany and there was a ban on the organisation of new party.

The question of ministerial instability therefore lost its importance. The Cabinet consisted of twenty members including the Leader and Chancellor Hitler. The President being also Chancellor the decree of the President was no longer required to be countersigned by the Chancellor. The members of the Cabinet were bound by oath to obey Hitler and had no option to differ from him. This Nazi Leader lost his hold over Germany when the latter was defeated in the hands of the Allies.

Sec. 5. The Federal Legislature: the Reichstag.

According to Weimer constitution the Federal Legislature consisted of two houses:—(i) the Reichstag and (ii) the Reichsrat. The Reichstag is the more popular and powerful Chamber. It is composed of members elected for four years by all men and women who are of the age of 20 years and above. All parties were represented in it according to their numerical strength. Since the introduction of Nazi Rule in Germany the Reichstag came to consist of members of the National Socialist (Nazi) party. It has a President and a Deputy President. The house regulates its own affairs and holds its meeting in public. The Federal Chancellor and the Ministers have access to the meeting.

The members of the Reichstag enjoy certain privileges. They cannot be arrested for any wrong during the session of the house without its consent. No proceeding can be drawn against a member for his voting or for speeches delivered in that connection. The members are entitled to travel free in all German Railways.

The Reichstag now enjoys considerable powers in legislation. No bill can be passed without its consent. Formerly, the Reichstag played an important part in the making of laws and had effective control over finance. It could also exercise control over the Executive by withholding supply of money. Since the rise of the Nazi party the Legislature consisted of nominees of the National party who had got to support every measure of the Government. Budget thus became the sole concern of the Cabinet and the Leader of the Reich had free hand to adjust it in any way he liked. The Legislature has also its power to ratify treaties.

The Reichstag amends the constitution if two-thirds of members are in favour of amendment provided the Upper House does not oppose. In case of such opposition the proposed amendment must be referred to the people for their approval.

The Reichstag may under certain conditions impeach the President, the Federal Chancellor and the ministers for violation of Federal law and can also recall the President.

Though the Nazi Rule in Germany had not done away with this chamber it took away the powers which it formerly possessed.

The Reichstag's present position.

The Reichstag existed merely for accepting unconditionally the decisions arrived at by the Nazi party. The real powers of legislation were vested in the Hitler Government by the Enabling Act passed by the Reichstag on 22nd March, 1933. The said Act simplified the legislative procedure and vested the power of making constitutional amendment and treaties in the National Cabinet headed by Hitler. With the fall of Nazism this act ceased to have any effect.

Sec. 5(a). The Reichsrat: its Power.

The Upper House of the German Federation is the Reichsrat. It does not enjoy those powers which were enjoyed by the Bundesrath. The present constitution has taken

The Reichsrat is composed of representatives of the component territories.

away those powers from this house and extended the power of the Lower House. The Reichsrat is to be composed of representatives of the component territories. Each territory must have at least one representative and no territory is allowed to claim more than two-fifths of the total votes. The delegates of component territories can exercise their independent opinion and are not bound to represent the will of the States.

The Reichsrat is to act mainly as a revising second chamber. It has no absolute veto on legislation. Again, a bill passed by the Reichstag may become an Act without the consent of the Reichsrat: but the Reichsrat may challenge the passing

The power of the Reichsrat.

of the bill within two weeks from the date of the final acceptance of the bill. In such a case the bill is again placed before the Reichstag and if the latter cannot agree with the Reichsrat the President may order a referendum. If he does not, the bill drops. The President is however, bound either to promulgate the law or to order a referendum if the Reichstag votes against the challenge by a three-fourths majority. The Reichsrat is not however a purely revising

The importance of the Reichsrat.

chamber. It has the right to initiate bills but this right is scarcely exercised. Again, all Government measures are introduced in the upper chamber. Unlike the Upper House of other democratic countries the Reichsrat participates in the framing of budget. It

enjoys the same power over money bills as it has over ordinary bills.

The Reichsrat also exercises considerable control over administration. It should be informed of all important affairs of the Reich. The various departments are also required to consult the committees of the Reichsrat and act according to their guidance and instructions.

With the abolition of separate state administration in January, 1934 the existence of Reichsrat, the only remnant of German Federalism was deemed to be superfluous. In February, 1934 the Hitler Government pronounced a decree for the dissolution of the chamber. Since this decree the Reichstag is dragging on its existence as the sole chamber of legislation with little or no power of legislation.

Sec. 5(b). The Legislative powers of the people: Referendum and Initiative.

The present German Constitution makes ample provisions for the direct participation of the people in the matter of legislation.

Rights and
duties of the
Germans.

When any house differs from another in respect of the passing of a particular Bill the President can order a referendum in order to determine the opinion of the masses. The framers of the Constitution however do not leave the matter entirely to the discretion of the President but make it obligatory upon the President to order such referendum when the Reichstag demands the passing of the bill by a three-fourths majority and the withholding of the publication of a statute by one-third majority.

When the people of Germany want to have a new bill passed they can submit it by a petition bearing the signature of at least one-tenth of the qualified voters.

The Nazi Government did not like the interference of the people in the details of legislation by means of referendum and initiative. It attempted to get popular sanction by referring only the general policy to the people for approval. As soon as this was secured it followed its own policy of administration without any further reference to people.

Sec. 5(c). The German Bill of Rights.

The Constitution of Germany exhaustively enumerates the rights and duties of German citizens. It recognises an equality of status of all German citizens and abolishes all distinctions arising out of birth, sex and rank. The citizens have been endowed with all fundamental rights including freedom of speech and freedom of the Press, freedom of trade and industry and freedom of religion.

The Constitution provides for a system of compulsory Free Primary Education to be imparted in public schools.

The acquisition and loss of nationality is governed by federal laws. The Constitution also provides for the creation of an Imperial Economic Council which will adequately represent the workers' council, the employers' associations, the Government and the consumers and advise the Legislature in the matter of economic legislation. The economic interest of the population is thus safeguarded. All these constitutional rights may be suspended in times of emergency when the President has exercised his power under article 48.

The Nazi regime made the provisions relating to Bill of Rights nugatory. Hitler immediately after his accession to chancellorship ordered suspension of all important public rights and confiscation of communist property.

All Labour unions and employers' associations have been made to disappear. The only organisation of workers and employers is the Labour Front which has both functional and regional aspects. In its functional aspect it is concerned with provision for education and recreation of the members. The workers under the Hitlerite regime enjoyed little freedom in regard to choice of work and were made to transfer their services according to requirements of the Nation.

Sec. 5(d). The National Economic Council.

For safeguarding the interests of industries the German constitution has made provision for the constitution of the National Economic Council with considerable power of initiating legislation relating to relevant matters touching industry, agriculture and other allied matters.

This Economic Council is to consist of delegates representing the workers, the employers, the consumers and the Government. For the purpose of adequate representation the workers and the employers should have their respective organisation within each local economic area. The primary Councils are entitled to send delegates to the District Councils. The District councils in their turn should send delegates to National Council.

The National Economic Council thus organised under democratic principle is to function as advisory body in regard to economic legislation. The Ministry has to send drafts of economic laws to the Council for consideration. The Council can also take initiative in the matter of economic legislation and introduce bills in the Legislature.

Sec. 6. The Judiciary.

One outstanding feature of the Weimer Constitution is the

independence of the Judiciary. The judges are not under the control of the Executive. They are appointed for life and can be removed from office only by authority of a judicial decision. The constitution makes provision for various grades of Courts. Minor civil cases and criminal cases are tried by the Amtsgerichte. This Court is presided over by a single Judge. The next higher Court is Landgerichte which has original jurisdiction over more important cases and hears appeals from the decisions of the Amtsgerichte. There are also superior Courts known as Oberlandesgerichte which have power to revise the decisions of smaller Courts. There is also a supreme Court which sits at Leipzig and is the final Court of justice in Germany. There are also administrative courts which deal with cases in which public officers are parties. These courts lost their power under the Nazi rule as they were no longer allowed to interfere in the decision of the Leader or any departmental controversy. There is the National Supreme Court to which appeal lies from the State-courts. The controversial questions of the constitution are decided by a special High Court of Justice created for the purpose. The Nazi rule created a special Court known as the Peoples' Court where political crimes were tried. It nationalized the administration of justice by creating the Ministry of Justice which exercised control over the judicial organisation in the States as well as in the Reich.

Sec. 7. The Civil Service.

The Nazi Government introduced a new type of Civil Service Regulations. The Jews were excluded and the Non-Aryans were dismissed from service. Similar restriction was imposed on the entry of the Liberals, Pacific pacifists, Socialists and Communists. The officers were bound by oath to discharge their duties under the guidance of the Nazi leader and were to be dismissed if they lost the confidence of the Nazis.

Sec. 8. Local Government in Germany.

The Nazi Government had done away with local autonomy by promulgating the Municipal ordinance in 1935. The ordinance brought under national control all municipalities with the exception of Berlin and made provision for the appointment of a party delegate for each municipality.. This Government was authorised to nominate three candidates from among whom, the Mayor and the Mayor's substitute were appointed by the Minister of Interior. The Mayor had to carry on municipal administration in consultation with the Municipal Council but he is not bound to follow the advice

of the council. These members of the council owed their appointment to the party delegate who invariably consulted with the Mayor before making appointment.

Sec. 9. Amendment of the Constitution.

According to Weimer constitution each House of the Federal Legislature has the right of moving amendments by two-third majority; but the lower House has been given greater voice in the matter of amendment in view of the fact that the Reichstag can override the objection of the Reicharat in regard to proposed amendment. Amendment of the constitution may also be made at the instance of the people when nine-tenths of the qualified voters sign a petition pressing for such amendment. When an amendment is put to the vote of the people it cannot be deemed to be carried unless there is an absolute majority of registered voters in favour of it. These statutory provisions for amendment were under suspension and the entire responsibility in the matter of amendment lay with Chancellor Hitler when he was in power.

Sec. 10. Postwar administration in Germany.

After the defeat of Germany in the recent European war Germany lost her right to regulate her own affairs. Ill luck brought her under the control of the Allied powers—U. S. A., Great Britain, France and Russia. Allied Control Council has been set up and occupied Germany has been divided into four zones each under the administrative control of one or other of the four allied powers. Germany has ceased to be an independent nation and has to bear the heavy burden of reparations; she is practically dependent upon the four allied powers and cannot claim any right to regulate her own affairs without the approval of the commanders of the allied powers. Marshal Zhukov, the commander of the Soviet zone in Germany has given the provincial administration power to issue laws provided they do not run counter to those of the control commission of the Soviet military administration. The main objective of the allied occupation and control is to prevent Germany from ever becoming a threat to the peace of the world. This will appear from the directive issued by the United States government to general Eisenhower. The essential steps suggested in the directive are:—(i) Elimination of Nazism and militarism in all forms, (ii) immediate apprehension of war criminals for punishment, (iii) industrial disarmament and demilitarisation of Germany with continual control over Germany's capacity to make war, (iv) preparation of eventual reconstruction of German political life on democratic basis, (v) control over the standard of living so as to keep the same on a level with neighbouring countries, (vi) utilisation of the German resources and reduction of consumption to

the surplus minimum so as to impose limits on imports and make the surplus available among the occupying forces.

The allied policy is to treat Germany as a single unit and in that light an export-import policy has been designed to keep down Germany's import to the minimum and to ensure equitable distribution among the four occupied Zones.

Dr. Renner's provisional government was officially recognised by the four powers on the Allied Council for Austria.

There is no central organisation for the whole of Germany. The British Zone is associated with an Advisory Council which consists of representative Germans. Each State has a prime minister and a number of other ministers who depend for support upon the nominated representative council. In the Russian Zone we find a nominated Government led by a Minister-President for the State and an ober-President for the province. Each State Government is associated with a consultative Assembly composed of elected members. The municipal administration lies in the hands of the elected Kreis; the chief official of the Kreis is however nominated by the military Government of the zone.

Questions and Answers

Q. 1. Summarise the powers of the Reichstag in the present German constitution.

Ans. See Sec. 5.

Q. 2. Discuss the nature of Federal Executive in the German Republic.

Ans. See Sec. 4.

Q. 3. Discuss the characteristic features of the Old German Constitution and compare them with those of the New Constitution.

Ans. See Sec. 4(a).

Q. 4. Discuss the position and powers of the President in the New German constitution.

Ans. See Sec. 5.

CHAPTER XXIV

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Sec. 1. A Historical Survey.

In ancient America the majority of the citizens were Englishmen who left their own country with a view to settling in the new country which gave them increased opportunities of earning their livelihood. It was quite natural that these people would take with them the ideas of English organisations and adapt the same to their needs. These organisations, however, were not uniform in character. There were three main types of organisations:—(1) The Virginia type, (2) The New England type, (3) The Middle Colonies type. All these colonies were under the control of British government.

Although the various colonies differed in respect of political organisation they contained people who were of the same race, spoke the same language and owed allegiance to the English Crown. All these factors combined and created a bond of union among the several colonies. The Union acquired new strength from the organisation of inter-colonial Congress. By united efforts colonies severed their political connection with Great Britain and the articles of confederation were drafted by the Congress in 1777.

These articles became law in 1781. The Confederation thus established could not bring stability in administration because there was no authority to enforce obedience from the States. To effect solidarity among the various States a constitution was drawn up in 1787 in a convention which met at Philadelphia under the Presidency of George Washington. This constitution came into force in 1789. It is this Constitution that now governs the organisation of government in the United States. All the states have combined to form a federal union. The constitution is based upon the theory of separation of power.

Sec. 2. The Present Constitution: its Sources: its Characteristic features.

The present Constitution of the United States is mainly written. It is composed of five elements: (a) The original document, (b) twenty amendments which guarantee freedom of speech, freedom of religion and individual right to life and property, (c) nu-

It is written and rigid.

merous other statutes supplementing the constitutional provisions, (d) numerous judicial decisions interpreting the constitutional laws and (e) habits and usages which are unwritten. It differs from the constitution of Great Britain which is mainly unwritten and is

It is based upon the principles of federation.

incessantly in process of development. In the United States there are several unwritten conventions which have acquired the force of law but the conventions play only a minor part. Secondly, the Constitution is rigid inasmuch as the constitutional rules cannot be changed or amended by the ordinary legislature in the ordinary way. An amendment of the constitution can be made only with the consent of the two-thirds of the Congress and three-fourths of State Legislatures. Thirdly, the constitution is based upon the principles of federation. The United States is a federal union of 48 States. All component States are equally

The theory of separation of powers.

represented in the Federal Government and enjoy the residuary powers which are not vested in the Federal Government. The Union Government has distinct organisation and each of the States

The Executive is not responsible to the Legislature.

has its own government. The State Governments are independent in their own spheres and are not subject to the control of the Federal Government. Fourthly, Constitution has applied the theory of separation of powers in distributing the powers among distinct organs of government. Although the various organs of government are not absolutely separated from one another, each organ is supreme within its own sphere. Fifthly, the constitution gives us an example of a form of government in which the Executive is not responsible to the Legislature.

The Judiciary is supreme.

Sixthly, the Judiciary in the United States enjoy a supremacy which is enjoyed in other States by the Legislature. The Judiciary is entitled to interpret the constitution and to determine whether a particular authority, executive or legislative has acted without jurisdiction.

Constitution provides for many checks and balances.

Seventhly, the constitution provides for many checks and balances with a view to securing harmony in administration. The upper chamber checks the radicalism of the popular chamber. The power of the Congress is controlled by the veto power of the Executive. The Executive in its turn must seek for the approval of the Senate in regard to many important administrative functions. Behind all these departments lie the will of the people and no department can go against this will. Whenever this will is flouted, the Judiciary which stands as a guardian of popular rights and interpreter of the constitution will declare the actions of the department as void and ultra vires.

Sec. 3. Division of Powers between the Federation and the State.

The Federal government of the United States has been vested in three authorities viz., the Executive, the Legislature and the Judiciary. The scope of the Federal government. The Federal Executive, Legislature and Judiciary. is strictly defined by the Constitution and the residuary powers have been vested in the States. Generally speaking, matters of general concern such as foreign relation, the army, the navy, postal service, customs, naturalisation and coinage are administered by the Federal government. The Federal government has been given authority by the sixteenth Amendment to impose and collect taxes on incomes. The theory of implied powers has sometimes been invoked by the federal authority in extending its sphere of activity in the domain of trade and transport. The judicial decisions have gone a great way in extending its sphere.

Certain restrictions on the powers of the Federation have been imposed by the constitution. These include prohibition from (i) Suspension of the writ of Habeas Corpus except in the case of rebellion or invasions, (ii) interference in the matter of religion and other fundamental rights, (iii) imposition of export duty.

In the same way certain restrictions have been imposed on the powers of States. The constitution does not allow them to enter into treaties with foreign powers, to coin money and to maintain Army.

The Federal Government has been given sufficient powers to enforce obedience to its law and does not depend upon the State Governments for their enforcement.

Sec. 4. The Federal Executive.

The chief head of the Executive is the President. The President is not a titular figurehead. He is the real executive head having great influence on the administration of the country and is not in any way responsible to the Legislature for his acts.

He is to be elected by the people indirectly through the electoral college which is composed of as many electors from each component State as the State has members in Congress. He is now elected on party lines and in a direct way contrary to the spirit of the Constitution which provides for the indirect election. He must be a natural born citizen and a resident of the United States for 14 years. No man can be eligible unless he has attained the age of thirty-five years.

The President holds his office for a period of four years. The constitution does not prescribe a limitation on his power to seek re-election as many times as he likes but it was the unwritten law in the United States till 1940 that President may be re-elected only once. In 1940 this unwritten law was disregarded and president Roosevelt was elected for the third term. Although the President is not responsible to the Legislature in practice, he is elected by the party that commands majority in the Congress and the result is that chance of friction between the Executive and the Legislature is avoided. The President is removable from his office before the expiry of his term only by means of impeachment. He can be impeached by the House of Representatives for treason, bribery or other high crimes and tried by the Senate in which two-thirds majority is necessary to convict him. In case of removal of the President and in case of his death or resignation, the Vice-President who is elected for the same term and in the same manner takes his place. The chief function of the vice-president is to preside over the Senate.

The President derives his authority partly from the constitution and partly from statutes passed by the Congress. Judicial decisions and usages have extended and confirmed his authority to some extent.

As a chief executive officer of the Federal Government it is the duty of the President to see that the laws of the Federal Government are obeyed by the citizens. He is the commander-in-chief of the army and the navy and enjoys dictatorial power during the war. He regulates the foreign relations and can make treaties with the consent of the Senate. He can enter into executive agreements without the consent of the Senate. He receives foreign ministers and appoints ambassadors. All principal officers derive their appointment from him but approval of the Senate is necessary for the appointment of judges, ministers, ambassadors, consuls and certain other important officials. This approval comes as a matter of course ; he can also remove all officers. The Federal ministers and many other purely executive officers hold their offices during the pleasure of the President. When the officer concerned is entrusted with quasi-legislative or quasi-judicial function the President has no free hand in his removal before expiry of the term. He can grant pardon and reprieve for all offenders except in the case of impeachment. In legislation the President can exercise a qualified veto. Every bill has to be presented to him for his signature. If he disapproves the bill it is sent back to the house in which it

The President
and his
position.

He regulates
the foreign
relation and
makes
treaties.

In legislation
he has a sus-
pensive veto.

originated and if the two-thirds of each house again pass the bill it becomes an Act without the signature of the President. The President has thus only a suspensive veto which becomes absolute

only when the Congress adjourns within ten days. The President is not the member of either house of the Legislature nor can he influence

legislation through ministers. He cannot for these reasons introduce any bill but the close relation between the Executive and the Legislature is maintained through 'messages' which the President addresses to the Congress from time to time. He can supplement the laws of the country by ordinances and executive orders having the force of law. The President has been given wide powers in regard to the New Deal. The National Industry Recovery Act and the National Labour Relation Act empowered the President to exercise unfettered discretion in making much needed laws for the rehabilitation and expansion of trade or industry and for promoting fair competition. The President is assisted in his work by ministers who are in charge of the various departments of administration and are responsible not to the Legislature but to him. The only connection of the Legislature with the ministers is that their appointment is subject to confirmation by the Senate. They are recruited at the option of the President from different parties. They cannot sit in the Congress. The American Cabinet which consists of the ministers each in charge of a department of administration has grown out of usage, is absolutely under the control of the President and acts as a body of advisers. Unlike the Prime-minister of England he can dictate to the ministers who are his subordinates. His position is superior to that of the Prime-minister who is responsible to the lower house for his policy of administration.

Sec. 4(a). The Relation of the Executive with the Legislature : The Defects of the system.

In U. S. A. the Executive has got a sphere of activity defined by the constitution and is not answerable to the Legislature in any way for its actions. The Legislature in its turn has its own sphere and cannot be controlled by the Chief Executive head. The President cannot dissolve the Legislature nor can he address the same for necessary direction. In spite of their independent position these two departments—the Executive and the Legislature—have developed a wholesome relation which we cannot ignore. The following points deserve notice in this connection :—

(i) The President of the U. S. A. is elected by the party which returns the largest number of members to the Legislature.

He is therefore of the same political opinion and this fact alone goes a great way in killing dissensions. He can easily ask a member of a party to initiate a bill in the legislature and guide it successfully with the help of other members.

(ii) Again, the vice-President of the U. S. A. is the President of the Senate and this makes for a harmonious relation between the two departments.

(iii) The President can influence legislation by the messages. He can also convene extra sessions of both Houses and can determine the date of adjournment.

(iv) The President enjoys a qualified veto on legislation. When a bill has been passed by the House of Representatives and the Senate, it is submitted to the President for his signature. If the President vetoes it the bill is reconsidered by both the Houses and may become an act if it commands two-thirds of the votes in each House. If the President does not veto the bill but fails to return the same within ten days after receipt thereof, the bill becomes an act after the expiry of ten days if the Congress is in session.

(v) The President has got to make treaties and important appointments with the consent of the Senate.

The above constitutional practices have no doubt important bearing upon the working of the governmental machinery ; but the absence of a closer relation between the two departments has led to unhealthy friction and sometimes created deadlocks in the administrative machinery. The Legislature is also hampered in the speedy enactment of much needed legislation by virtue of the exercise of veto power by the President. The irresponsibility of the Executive head is inconsistent with the principle of democracy and may result in periodic despotism. The Spoils System by which the President is allowed to reward his supporters with important offices has been associated with serious abuses and accounts for inefficiency of the departments.

Sec. 5. The Federal Legislature.

The Federal Legislature consists of two houses viz., the Senate and the House of Representatives. The two houses constitute the Congress of the United States.

The Senate is composed of 96 members, each State sending two members. No man can be returned to the Senate unless he is thirty years old and is a citizen of the United States for nine years. The senators are elected by the voters of each State for six years, one-third retiring every two years. They represent the State but they are

The effect of
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relation.

The Senate
and its
Constitution.

not mere delegates of the States which they represent. They can use their independent discretion.

The Senate has a definite organisation of its own. The Vice-President of the United States acts as the president of the Senate.

The President of the Senate has no vote except in the case when the house is equally divided. When the Vice-President of the United States succeeds to the post of the President on the latter's death, resignation or removal the Senate elects a Chairman from among its members. The Senate regulates its own proceedings and frames rules governing procedure that must be followed. There is the

committee system and each subject is referred to a standing committee created for the purpose. The committee examines the subject and makes necessary recommendations. The Senate represents the second chamber of the United States but unlike the second chambers of other States it acts not merely as a house of revision but also takes part in the initiation of many important bills. The Senate cannot however introduce money bills but it

can propose any amendment it likes. In regard to other bills it has co-ordinate powers with the lower house and can reject or amend any bill of legislation. The Senate has certain non-legislative functions :—The appointments and treaties made by the President are subject to confirmation by the Senate. A two-thirds majority in the Senate is necessary for the ratification of such treaties. The Senate also acts as a court for the trial of impeachments preferred by the House of Representatives. Thus we find that the Senate exercises the legislative, the executive and the judicial power and is the most powerful of all second chambers. It has justified its existence by successfully checking both the democratic recklessness of the Lower House and the monarchical ambition of the President. The prominent position of the Senate is due to the following factors :—

Non-legislative functions.

(i) The constitutional provisions which have conferred certain powers on the Senate.

(ii) The long life and the quasi-permanent character of the House which attracts men of experience and adds to its prestige.

(iii) The small size of the house which facilitates cool deliberations of legislative measures.

(iv) Absence of closure which promotes free discussion of legislative measures.

The lower house of the Congress is the House of Representatives. This house is composed of members elected every two

years, by the voters of each of the States in proportion to the population as determined by the latest census. The House of Representatives ; the composition. The representatives are eligible only when they are twenty-five years old and are citizens of the United States for seven years and inhabitants of the State from which they are chosen. Besides these representatives from the component States, the house contains representatives of the territories which have not as yet reached statehood and are managed directly by the federal government. The present house consists of 433 members. Each State has its own franchise laws and the election takes place according to these laws. Women enjoy the same rights of franchise as men. The house is the judge of election disputes referred to it and can with the concurrence of two-thirds of its members expel a member.

The House elects its own President who is known as the Speaker. Prior to 1911 the Speaker used to form the various committees and used to preside over the Committees on Rules. Now the appointment of Committees is vested in the hands of the House. The committees are formed in the following ways :—Each party caucus has to select a committee on committees and this Committee in its turn determines by mutual agreement the number of persons for each party who will serve in the various committees. There are many committees with members varying from 2 to 35. There is a Committee on Rules which proposes the rules which should be adopted by the Congress at the beginning of the New Congress. There is also a committee of the whole House which is presided over by a member other than the Speaker of the House. This committee has got to examine bills concerning revenues and appropriation as well as Private Bills. Unlike the Committee of the House of Commons these Committees get the bills for consideration before any discussion takes place in the House. They enjoy greater freedom of amendment and may sometimes substitute a new bill : they may even kill a bill by not submitting the report. Each committee must have its chairman who carries with him much distinction in respect of position and pay. The Speaker had a great influence in the house but he had lost much of his power. He still interprets the rules which the House follows. He maintains the order of the House. He puts all questions to vote and exercises a casting vote in the case of a tie with a view to maintaining a status quo. He also appoints the members of the Select Committee and the Conference Committee. Unlike the Speaker of the House of Commons he remains a party man even after his election and influences legislation greatly according to the policy of the party he happens to represent. The Speaker of the House of Commons is re-elected so long as he is willing to

serve. The position is otherwise in U. S. A. where the election of the speaker is opposed at every election. Again, the legislative control is exercised in U. S. A. by the chairman of the committee while in England such control is exercised by the Executive. The House has exclusive power in the initiation of bills of revenue. It enjoys equal power of legislation with the Senate and no bill can be passed without its consent. The House has no administrative function. It enjoys the power of impeaching officials. It controls the executive only in an indirect way by controlling the supply of funds. It does not make or unmake the ministry.

The members of either house cannot be appointed to any post under the United States. Each member receives an allowance of 10,000 dollars a year and travelling allowance.

Sec. 5(a). The Process of Law making.

The process of law making commences with the introduction of a bill by a private member by simply placing a copy of the bill on the clerk's table. Then comes the first Reading which is purely formal. No discussion takes place at this stage. The bill is then referred to an appropriate committee and is printed and distributed. The committee then examines the Bill. It may or may not submit its report. In the later case the bill drops. If it is reported by the committee it is given a second Reading when the bill is discussed and amendments are moved and voted. If the bill with amendments if any, wins the approval of the majority in the House, the bill is read for the third time which is also formal. The bill is then sent to the other House. If the latter House agrees it is sent to the President. In case of disagreement a conference committee is convened and the bill is referred to the said committee for compromise. If a compromise is made, the bill is then sent to the President. If the President signifies his assent the bill becomes a law. If the President vetoes the bill it may become a law if the congress passes it by two-third vote. If the President does not sign the bill it may become an Act after ten days if the congress is then in session.

Sec. 6. The Federal Judiciary.

Like all other departments the judiciary is constituted and exercises its power in accordance with the rules of constitution. The Federal courts have been given power to decide question which comes within the domain of federal government and to decide cases involving foreign relation as well as cases where the state courts have no complete jurisdiction. The constitution and organisation of federal courts have been left to the Congress.

The Federal judiciary is the most important organ in the U. S. A. government. It really wields the supreme power and is

the final authority for interpretation of the constitution. It has supreme control over other organs both state and federal and can enforce their obedience to its orders.

At the head of the federal judiciary there is the Supreme Court of Justice which consists of Chief Justice and eight associate Judges.

The Supreme Court holds its annual sessions at Washington. This Court hears appeal from inferior Federal Courts and the highest state courts in cases involving interpretation of the constitution and enjoys original jurisdiction in cases arising under the federal constitution, laws and treaties, cases affecting ambassadors, foreign ministers, consuls and in cases where a state happens to be a party. Below this Court there are nine Circuit Courts of Appeal. The Circuits are divided into ninety-one districts each of which has a district court.

An Appeal lies from the Circuit Court to the Supreme Court of Justice. The Circuit Court of Appeals, which consists of one Judge of the Supreme Court and two circuit judges, has relieved the Supreme Court of Justice of its heavy pressure of business.

The Supreme Court has played an important role in developing the constitution by its novel doctrine of "implied powers".

It is the guardian of the constitution and is responsible for maintaining the checks and balances provided in the constitution.

It may be regarded as the Circuit which has fixed firm the whole structure of federation. It has compelled each organ to move within the sphere prescribed by the constitution. In exercising this function the Supreme Court can declare laws passed by the congress and the State Legislatures as unconstitutional when they contravene the provisions of the constitution. This function of the Supreme Court has evoked considerable criticism on the ground that it has deprived the Congress of any real authority in the domain of legislation.

There are also a number of other courts having jurisdiction to try special cases.

The judges are appointed by the President with the approval of the Senate. They are appointed for life and hold their offices during good behaviour. The judges are given salaries, which cannot be reduced during the term of the office. These provisions are meant for securing independence of the judges.

Sec. 7. The Government of State.

The constitution defines the powers of the federal government as well as those of the state governments. Generally speaking,

the subjects of general interests are administered by the Federal Government and the subjects in which the individual states are concerned are administered by the state governments. The states enjoy autonomy. They can change their constitutions without altering the republican character. They can constitutions without altering the republican character. They can freely choose their executive, legislature and judiciary and make arrangement for local administration. They can raise revenue by taxation. The citizens of the United States are to obey the laws of the Federal Government and of the State Government.

The component states must have a republican form of government and must have definite constitutions. The different organs of government have given different powers and each organ should exercise its powers within the limits set forth in the constitution. The legislature consists of two houses—an upper house and a lower house. Both the houses together are known as the General Assembly. The members of the upper house are elected for four years and the members of the lower house are elected for two years. The qualifications of the members differ in different states. The legislatures of the states exercise those legislative functions which are not specially reserved for the Federal Government, but sometimes a state constitution further restricts the power of the legislature. The rules of procedure are contained in the state constitution.

The executive head in the State is the governor. He is elected by the direct vote of the people and his term varies from two to four year. Some state have also Lieutenant Governors. Other State officials are elected by the people and are independent of the governor. They can be removed by means of impeachment by the lower house. The governor is not the real executive head. His chief function is to supervise the administration of laws and keep the legislature informed of the legislative needs of the state. He is the Commander of the State Militia. He has a veto on legislation but his veto may be over-riden by a certain majority (usually two-thirds or three-fifths) of the two houses. He enjoys power of granting pardons and remitting fines.

Each State has its own judicial organisation. The Federal Government defines the subjects which may be tried by the state courts. The highest court is the Supreme Court which consists of Chief Justice and several associate judges. The Court is the final Court of appeal. Below this court there are Circuit Courts which have sometimes permanent judges. They hear appeals from the lower courts. The next lower court is the county

or municipal court which hears appeal from the lowest court viz., the courts of the justice and which has extensive civil and criminal jurisdiction. Generally the judges are elected by the people. Sometimes they are elected by the legislature.

✓ Sec. 8. Amendment of the Constitution.

The constitution of the federal government as well as those of the state governments are rigid in character. The constitutional rules can be changed and amended only by a special procedure. In the case of federal government an amendment can be proposed by two-thirds of each house of the legislature or by the convention created by the Congress at the request of two-thirds of the state legislatures. When the amendment has been proposed, the Congress, may either submit the proposal to the legislatures of the states or to the state conventions specially created for the purpose. If the amendment is agreed to by three-fourths of the states it is incorporated in the constitution.

In the case of state governments the constitutions may be amended in the following manner. The legislature may at the request of the people call a convention which is elected in the ordinary way. It considers the amendment and if it agrees to the amendment it is then submitted to the vote of the people. If the people agree the amendment is adopted and incorporated in the constitution. In making amendment the states must not change the republican character of government.

Sec. 9. The Local Government in the United States.

The system of local government plays an important part in the United States. The duties of local governments are numerous and in substance they are in charge of the administration of laws. They are responsible for the administration of education, sanitation, police, jails, poor relief and communication and for the assessment and collection of charges. The local bodies have in the main executive functions and their legislative functions are strictly defined by charters. Sometimes they exercise certain amount of judicial powers.

There are three main types of organisation of local government viz., (1) Township type, (2) The county type, (3) The compound type. The compound type is the most common type. In township the authority of administration is vested in the town meeting which is composed of all citizens having suffrage. The town meeting elects 'select men' who exercise the executive authority and are responsible to the town meeting.

The county type prevails in southern States and is the most suitable type of local government for larger rural areas. The county commissioners are at the head of the organisation. The ordinary officials are elected by the people. It maintains a judicial organisation and has control over education, roads, bridges and jails. In some areas the compound type prevails which is characterised by a variety of organisations. Besides these local units there are municipal organisations in grown-up villages and towns.

The local bodies raise their revenue by direct taxes levied on real and personal property. The total amount of direct taxes acquired by the local bodies is computed by the state authorities and distributed among the counties in proportion to the value of assessed property in each. The county again adds to the sum the amount required for its own use and then distributes it among its townships with reference to the value of the assessed property in each.

Sec. 10. The American system of Local Government as Compared with the English system.

The American system of local government differs from the English system in the following important points. In the first place the county council in England is at the helm of local affairs and appoints the chief executive officer and many other officers to work out the details of administration. These officers serve as long as they are efficient and have not to vacate their office with the expiry of the term of the council. The position is otherwise in U. S. A. where the officers of the local government owe their appointment to the Mayor and leave the office with him. The appointment is usually made as a reward to persons who supported the Mayor in his election and has little or no reference to the ability or efficiency.

Secondly, the control of the central government is more rigid in America than in England. In the latter the Central Government exercises through the various ministers only nominal control of supervision and allows the local authorities to enjoy substantial autonomy in their spheres of action. In America the Commonwealth Legislatures make laws regulating the details of municipal administration and the local authorities must comply with these laws in performing their functions. This goes to cripple the activity of municipal authorities and reduces the scope of official discretion.

The power of borrowing is unlimited in England while in America the power is strictly limited. In England the local government may borrow any amount it requires but the sanction of the Central Government must be obtained before any loan is incurred. In U. S. A. the maximum limit is imposed and the local governments have freedom within the limit so imposed.

Questions and Answers

Q. 1. Show how the constitutional changes can be effected in the U. S. A. (C. U. 1932).

Ans. See *Sec. 8*.

Q. 2. Compare the Constitutional powers of the President of U. S. A. (C. U. 1944, Punj. 1940, Pat. 1939, Dac. 1935).

Ans. See *Sec. 4*.

Q. 3. Discuss the power of the Judiciary in relation to the Act of the Legislature in England, U. S. A. and India. (C. U. 1937, All. 1944, Nag. 1937).

Ans. See *Sec. 2*.

Q. 4. Why is the Senate of the U. S. A. called the most powerful second chamber in the world. (All. 1943 ; Punj. 1941).

Ans. See *Sec. 5*.

CHAPTER XXV

THE GOVERNMENT OF INDIA

Sec. 1. Historical.

India was once a dependency of Great Britain and its constitution was regulated by various statutes which had been passed by the British Government. The new constitution which is now in the anvil has a long history behind it. The English came to India as members of trading companies and they scarcely entertained the idea of administering the country. They continued their purely commercial functions during practically the whole of the seventeenth century.

During the eighteenth century the company began to extend its territorial power in India. The English had to struggle hard with the French who were trying to establish their supremacy in various parts of India. As a result of this struggle the English acquired new territories and ultimately Lord Clive laid the foundation of the British rule in India by his victory in the battle of Plassey in 1757. In 1765 the Com-

The English came to India as a Trading Company.

Lord Clive and the battle of Plassey.

pany received the grant of the Dewani of Bengal, Bihar and Orissa from the Mughal Emperor. The administration of revenue thus came into the hands of the Company while the executive functions still lay in the hands of the Mughal Emperor. It was in 1772 when Warren Hastings began for the first time to exercise full powers of Government.

The growing prosperity of the Company and the establishment of their territorial supremacy in India attracted the attention

The Regulating
Act of 1773.

of the Home authorities which then came to regulate the activity of the Company with a view to establishing the sovereignty of the British parliament. The first important Act was the Regulat-

ing Act of 1773. It laid down a complete scheme for the administration of Company's territories. According to this Act the Government of Bengal was to consist of Governor-General with four councillors while Madras and Bombay were to be governed by separate presidents and councils which were to be subordinated to the Governor-General-in-Council. The Act empowered the Governor-General-in-Council to issue rules and regulations and to inflict punishment for enforcing obedience to these rules. The Supreme Court was constituted and this consisted of the Chief

The Supreme
Court and its
control over
the Executive.

Justice and three judges appointed by the Crown. Provisions were also made for appeal to the Privy Council from the decisions of this Court. The Supreme Court was independent of the Executive and was intended to control the powers

of the Executive. The Supreme Court interfered too frequently in the affairs of the executive with the result that the Governor-General and his Council could not take those measures which were necessary for the successful administration of India. Another important defect was that the Act did not strictly define the extent of control which the Governor-General should exercise over the affairs of other provinces. The Act did not authorize the Governor-General to over-rule the decisions of the majority of the members of his Council and the result was that the Chief Executive head in India could not act independently for the welfare of the people in India. To liberate the Executive from the control of the Supreme Court an Amending Act was passed in 1781 and this Act exempted the Governor-General and his council from the jurisdiction of the Supreme Court in regard to their official work and empowered the Governor-General-in-Council to create local courts of justice.

Next important Act was Pitt's India Act of 1784. By this

Pitt's India
Act of 1784.

Act a supreme body which consisted of six Parliamentary Commissioners was created and this was known as the Board of Control. The system of administration was vested in the Board of Con-

trol but the Court of Directors still enjoyed the privilege of appointing and removing governors. The Act reduced the number of Governor-General's councillors from four to three and strengthened the grip of the Governor-General-in-Council over the Presidencies of Bombay and Madras.

Next came the Act of 1786 which authorised the Governor-General to over-ride the decision of his council.

The Charter Act of 1833 made the Company a trustee for the Crown in respect of all the territories acquired by it. The Governor-General of Bengal was designated as the Governor-General of India with powers to make laws for the whole of India and a Law Member was added to his council. This law member was not a member of the executive council and formed with other members a legislative body with power to make laws.

The next memorable act was the act of 1853 which completely established the authority of the Board of Control. The act also created the first Indian Legislative Council which consisted of twelve members including the Governor-General and the four members of the council, the Commander-in-chief and six other members : of these six members four members were appointed by the Governments of Madras, Bombay, Bengal and Agra and the remaining two members were the Chief Justice and another judge of the Bengal Supreme Court. This act made provision for the appointment of Governor or Lieutenant-Governor for Bengal. This act was followed by the Government of India Act of 1854 which placed under control of the Governor-General-in-Council all the territories of the East India Company and led to the establishment of various commissionership in India.

In 1858 the Act for better Government of India was passed. This act took away the authority of administration from the Court of Directors and from the Board of Control and vested it in the Secretary of State for India with whom was associated a council. The Secretary of State was a member of the Cabinet, and as such was responsible to the Parliament. For this reason he had right to over-ride the decisions of his council and to act in his own way. The Secretary of State had control over the expenditure of revenues of India but could not grant any supply without the concurrence of the majority of the council. The Act established the authority of the Crown in the matter of appointment of Governor-General, Governors, members of the Council of India. The Governor-General came to be known as the Viceroy.

Next came the Indian Council Act of 1861 which removed the difficulties of centralised legislation and provided for separate Legislative councils for Bengal, Madras and Bombay. The presence of non-official element in these councils was also secured. The Legislative Council of the Governor-General came to consist of additional number of members not less than six and not more than twelve nominated by the Governor-General for two years. At least half of these members were to be non-official. The Act also enhanced the legislative power of the Governor-General-in-Council. He could issue ordinances which had the force of law for six months. He could veto any law passed by the Legislative Council. The Act authorised the council in Bombay and Madras to exercise legislative powers and empowered the Governor-General to establish legislative council in other provinces. In pursuance of this authority legislative councils were set up in Bengal in 1862, in the United Provinces in 1886, in the Punjab and in Burma in 1898, in Assam in 1905 and in Bihar and Orissa in 1912 and in Central Provinces in 1913. The local legislatures could legislate subject to the approval of the Governor-General and was strictly forbidden to legislate in certain matters which affected the Central Government.

The year 1861 is important for another reason. In this year the Indian High Courts Act was passed and High Courts were established at Calcutta, Bombay and Madras. These High Courts came to consist of a Chief Justice and other judges appointed by the Crown.

The constitution and powers of the Legislative Councils were further improved by the Indian Councils Act, 1892. This Act fixed the number of nominated members for the Governor-General's Council from ten to sixteen and increased the number of members to be nominated to the Councils of Bombay, Madras, Bengal, and the United Provinces. The councils were given the right to criticise the financial policy of the Government and the members were given the right to ask questions. The Provincial Councils became representative of the different interests such as Landlords, Universities, Corporation, District Boards, Chambers of Commerce. The Morley-Minto Act otherwise known as the Indian Councils Act of 1909 increased substantially the number of members of the Legislative Councils and removed official majority in the Provincial Councils. The principle of election which was legally recognised for the first time inaugurated the system of communal representation by special electorates. The Provincial Councils were represented by the various sections including the Landlords, Muni-

The Indian Council Act of 1861.

The Council Act of 1892.

The Provincial Council represented the various interests.

icipalities, District Boards, Mahomedans, Chambers of Commerce and Universities and at the same time provision was made for the representation of the special interests. In the Indian Legislature there was an addition of 60 members of whom not more than 28 were officials ; five seats were reserved for the representatives of Special Communities and were to be filled up by nomination, and 27 members were elected partly by special constituencies, e.g., Mahomedans, Landlords, Chambers of Commerce and partly by non-official members of the Provincial Legislative Councils. The powers of the Indian Legislature and of the Provincial legislatures were to be exercised according to the limitations prescribed in the Act. * The members were given the right to propose legislations and to take the vote of the Councils on the resolutions. Free discussion was allowed on the financial matters as well as on matters of public interest.

The Councils thus constituted under the Morley-Minto Act could not produce satisfactory results inasmuch as the members were elected indirectly and for that reason people did not take active interest in the election of members. The representatives in their turn were not in intimate touch with the citizens. Again, the number of representatives was too small when compared with the vast population which they represented and the minorities were left unrepresented. Another defect of these councils was that the Indians had little voice in legislations. There was official majority in the Indian legislature and in the Provincial legislative councils were there was non-official majority the government could command effective majority. Again, the responsibility in the matter of administration still lay in the hands of the bureaucracy which could turn a deaf ear to the recommendations of the members of the legislature. Lastly, the Council contained members who represented particular sections and could not for that reason safeguard the general interest of the people.

The defects of the Morley-Minto Act must be removed. Again, with the spread of education the Indians began to take increasing interest in the politics of the time. The Indian National Congress which was founded in 1885 demanded a type of government which prevailed in the self-governing dominions. In 1906 the Moslem League was created and this League had for its object the protection and adequate representation of the Mahomedans. All these various organisations proved in clear terms the defects of the existing system of administration and demanded a more democratic form of government in which the Indian opinion would have greater weight. In the meantime the Great War broke out and during this war India rendered immense services

to Great Britain by making contributions both in man and money. The Indian statesmen did not miss the opportunity and wanted from Great Britain an assurance to the effect that as soon as war was over, she should grant Swaraj to India. Accordingly, on the 20th August, 1917 the following pronouncement was made in the

The goal of the Government of India. House of Commons by Mr. Montague, the then Secretary of State:—"The policy of His Majesty's Government with which the Government of India

are in complete accord, is that of increasing associations of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to progressive realization of responsible government in India as an integral part of the British Empire. The progress in the direction of responsible government can be achieved by successive stages. The British Government and the Government of India on whom the responsibility would lie for the welfare and advancement of the Indian people must be the judges of the time and measure of each advance and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it was found that confidence could be reposed in their sense of responsibility."

A need for reform was keenly felt and the Government of India Act, 1919 was passed on the basis of the recommendations contained in the Montague-Chelmsford Report (1918). The joint

Principles of reform as contained in the Montague Chelmsford Report.

authors of the report laid down the following four general principles, viz., (i) There should be as far as possible complete popular control in local bodies and the largest possible independence for them of outside control. (ii) The provinces are the domains in which the earliest step towards the progressive realisation of responsible government should be taken. This would involve making the provincial legislatures more democratic in organisation and giving the provinces largest measures of independence in a manner which does not affect the responsibility of the Government of India to the British Parliament. (iii) At the same time the Indian Legislature should be made more representative and be given increasing opportunities for influencing the executive but the latter should remain wholly responsible to the Parliament. (iv) There should be gradual relaxation of the control of the Parliament and of the Secretary of State over the Government of India and the Provincial governments.

The Government of India Act, 1919, was an important constitutional document inasmuch as it introduced substantial changes in the administrative machinery. We shall now have a brief review of the important constitutional changes introduced by this Act.

The Act of 1919 reserved immense power in the hands of the Crown and the Parliament. The Crown enjoyed the power of vetoing Acts of the Indian Legislature as well as of the Local Legislatures. The Governor-General was authorised to reserve bills for the signification of His Majesty's pleasure. Again, bills passed by the certificate of the Governor-General or of any Provincial Governor could not have effect without the assent of His Majesty-in-Council. The Crown retained substantial powers in the matter of appointment of important officers and the establishment of new High Courts.

The Secretary of State for India was a member of the Cabinet and was as such responsible to the British Parliament for the administration of India. To ensure this responsibility the Governor-General and the Provincial Governors were required to pay due obedience to his orders.

The Act provided that the salary of the Secretary of State should be paid out of money provided by the Parliament and thus reduced the burden on Indian revenue. The constitution of the Council of India which was associated with the Secretary of State was substantially modified so as to consist of not less than eight and not more than twelve members as the Secretary of State might decide. To ensure Indian experience the Act further provided that at least one-half of the number must be persons who had served or resided in India for at least ten years and must not have left India for more than five years before their appointment. The Council was not at all representative: nevertheless the Secretary of State who was responsible to the Parliament had to act in concurrence of a majority of votes in the council. He could over-rule the Council except in certain matters in which decision of the majority was to prevail.

The Act also made provision for the appointment of a High Commissioner for India in the United Kingdom to relieve the Secretary of State in respect of certain function exercisable by him and to perform certain specified functions on behalf of the Governor-General.

The Central Executive had at the helm the Governor-General and his Executive Council. The Governor-General and the members of his council seven in number were appointed by His Majesty and were given salaries which could not be touched by the Indian Legislature. Neither the Governor-General nor the members of his council could be held responsible to the Legislature for the administration

of the Departments placed under their charge. The Governor-General was ordinarily bound by decision of the majority of members, but could over-ride his council for the safety, tranquillity and interest of India. The Constitution of the Executive Council of the Governor-General was altered so as to remove the statutory limit on the number of members and to ensure the existence of experienced men in the council. In the legislative domain the interference of the executive continued to be as marked as ever. The bills relating to abolition of any High Court or empowering any court other than the High Court to pass sentence of death on any British-born subject could not be passed without the approval of the Secretary of State in council. Previous sanction of the Governor-General was required for the introduction of any bill affecting the public debts or public revenue of India, the religion of the Indians, the discipline of the armed forces or foreign relations of the Government or any Act of the Local Legislature or an Act or Ordinance of the Governor-General. Again, the Governor-General could enact laws by certificate ignoring the declared opinion of the representatives of people. He could also veto any bill passed by the Legislature and restore any demand for grant refused or reduced by the Legislature.

The Indian Legislature consisted of the Governor-General and two chambers—The Council of State and the Legislative Assembly. The Legislative Assembly was more democratic in structure and consisted of 148 members of whom 105 were elected to represent the various communal groups and interests in India. The life of the Assembly was three years. The Council of State was to consist of 60 members of whom 33 were elected. The powers of the Legislature were limited.

The Act increased the number of Governor's provinces to eight by raising five of the provinces formerly administered by Lieutenant Governors or Chief Commissioners—The United Provinces, the Punjab, Bihar and Orissa, the Central Provinces and Assam—to the status of Governors' provinces. These five Governors were given status inferior to that of three Presidency Governors of Bengal, Bombay, and Madras.

Provision was made in the Act of 1919 for the classification of subjects of administration under the central and the provincial subjects and for the devolution of authority in respect of provincial subjects to the Provincial Governments. The central subjects included matters which concerned the whole of British India e.g., Military affairs, Foreign affairs, Customs, Currency, Railway, Post and Telegraph, Public Debts, Civil and Criminal laws. The provincial subjects included matters of purely provincial

The number of Governors' Provinces under the Act of 1919.

Classification of subjects of administration.

concern. The provincial subjects were further classified as the Reserved and the Transferred subjects. There was introduced in the Governor's province a system of dyarchy under which the executive government consisted of two parts—one comprising of the Governor and his Executive council and the other consisting of the Governor acting with the ministers. The former was in charge of the Reserved subjects while the latter administered the Transferred subjects. The Transferred subjects included Local Self-Government, Education, Medical administration, Sanitation, Public Health, Public Works, Agriculture, Development of Industries, Excise, Civil Veterinary Department, Fisheries and Co-operative Societies. The Reserved subjects included Famine, Land Revenue, Pension and Reformatories, control of Newspapers and Presses, Inspection of Factories, and Agency Functions.

The ministers who were given the statutory authority of helping the Governor in the discharge of his responsibility relating to the Transferred Department were to be appointed by the Governor from among the non-official elected members of the Legislative Council. They were to be paid the same salary as was given to the members of the executive council subject to vote of the Legislative Council for a lower amount. They had therefore to serve two masters—the Governor and the Legislative Council. The former could remove them while the latter could reduce their salaries.

Appointment
and Salary
of Ministers.

The Governor was given the right of disregarding the opinion of the ministers and could dismiss the minister. The Governor could appoint Council Secretaries from among the non-official members of the Legislature. These council secretaries held their offices during the Governor's pleasure and had to perform such duties as the members of the Executive Council and the ministers assigned to them.

Council
Secretaries
and their
functions.

The Act of 1919 increased the number of members of the Legislative Council of each province. Not more than 20 per cent of the total number of members were to be official and not less than 70 per cent elected.

The Legislative Council was given a nominal life of three years but the Governor of the province had power to dissolve it earlier and to extend its term for a maximum period of one year.

The Legisla-
ture repre-
sentative in
character.

The Act of 1919 gave the provinces an autonomy which did not convey an idea of freedom from central control. The Governor-General-in-Council continued to exercise supervising autho-

Provincial
autonomy
under the
Act of 1919.

rity over the administration of Reserved Departments and in a less degree over the administration of Transferred subjects. Rule 49 of the Devolution Rules authorised the Governor-General-in-Council to exercise his powers of superintendence, direction and control in relation to Reserved subjects only for the following purposes viz :

- Restrictions on the power of the Governor-General-in-Council.
- (1) to safeguard the administration of central subjects;
 - (2) to decide questions between two provinces in cases where the provinces concerned failed to arrive at an agreement;
 - (3) to safeguard the due exercise and performance of any powers and duties possessed by or imposed on the Governor-General-in-Council under, or in connection with or for the purposes of the following provisions of the Act namely, Sec. 29-A, 30(1A), Part vii-A or of any rules made by or with the sanction of the Secretary of State in Council.

Rules framed under Sec. 19-A of the Government of India Act imposed the same restrictions on the power of the Secretary of State in relation to Transferred subjects and authorised him to interfere for two more purposes viz., to safeguard Imperial interest and to determine the position of the Government of India in respect of questions arising between India and other parts of the British Empire. In regard to Reserved subjects the Secretary of State knew no statutory relaxation of control but he did scarcely interfere in matters of purely Indian interest except in cases of emergency. The Secretary of State was held responsible to the British Parliament for the administration of India and was therefore authorised to superintend, direct and control all acts, operations and concerns which related to the government and revenues of India and the Governor-General was under obligation to obey his orders. The previous sanction of the Secretary of State was required in respect of creation of any post for the Indian Civil service and in respect of any grant of gratuities and pensions to government servants wounded while discharging duties.

The legislative autonomy of the provinces did not mean any real autonomy in view of provisions for obtaining previous sanctions of the Governor-General in regard to certain specified classes of bills. The Governor-General was also empowered to disallow an Act passed by the provincial legislatures. Again, the Reservation of Bills Rules made it obligatory on the provincial Governors to reserve certain bills for the consideration of the Governor-General. Again, the Council could not pass any Act which would affect any act of the Central Legislature or of the

Legislative subordination.

Parliament. An Act passed by the Provincial council and assented to by the Governor could not be operative unless the Governor-General assented thereto. The Provincial Governor could also pass laws by certifying that the bills unapproved by the Legislature were essential for the discharge of his responsibility for the subject.

The Government of India Act which was based upon this sham autonomy could not work successfully. The system of dyarchy

Defects of
dyarchy.

which it had introduced in the provincial sphere was also defective for the following reasons:—
First, division of functions into two halves to be administered independently by the two distinct halves of the administrative machinery was far from being scientific. Secondly, the ministers who were appointed and could be dismissed by the Governor and whose opinion could be easily disregarded enjoyed no real powers. People had no confidence in ministers who counted more or less upon the official bloc for support and lacked in effective power to materialise their projects. The ministers had no control over the Departmental Secretary who was a member of the Indian Civil Service. This anomalous position often accounted for inefficiency of administration. Thirdly, the devolution rules framed under the Act for relaxation of control did not help much in the matter of progressive realisation of responsible government. Fourthly, the principles of joint deliberation and collective responsibility were not accepted. Fifthly, absence of an well organised party system accounted for ministerial instability. Sixthly, ministers had no control over funds which were necessary for the proper administration of the nation-building departments. Lastly, the Meston Award which fixed the annual contributions payable by the Provincial Government to the Central Government affected seriously the financial position of the provinces.

These glaring defects of the Act of 1919 became apparent during the short term for which the constitution had been in operation. The Simon Commission was appointed to examine the then constitution and to report as to whether it was desirable to establish the principle of responsible government in India.

The report of the Simon Commission which was published in June, 1930 contained the following important recommendations

Civil Dis-
obedience
movement.

viz., (a) Re-organisation of British India on a federal basis with a view to such future development as may afford opportunity to the Native States for joining the Federation at their option.
(b) Abolition of dyarchy and the establishment of ministry which might include one or more non-elected persons. (c) Extension of

franchise of males and females and increase in the number of members of the legislature. (d) Retention of communal electorates. (e) Minority weightage of Muhammadans. (f) Continuance of the overriding powers of Governors in the executive sphere and of his power of certifying rejected bills and of restoring rejected demand. (g) Continuance of executive independence. (h) Election of the members of the Council of State by the provincial second chambers if any or in their absence by the provincial councils and (i) separation of Burma from India.

The report was condemned by the public men of India as its recommendations fell far short of India's national demand. The First Round Table Conference met at St. James Palace in London on the 12th Nov. 1930. It was followed by the Second Round Table Conference at the closing of which the Prime Minister announced the famous Communal Award which was extremely unfair to the Hindus and separated the depressed classes from the caste Hindus for electoral purposes. Mahatma Gandhi could not tolerate this interference on the part of the Prime Minister, took to fasting and compelled the Prime Minister to revise his Award in accordance with the terms of Poona Pact which abolished separate electorate but gave the depressed classes larger representation.

The Third Round Table Conference met on the 17th November 1932 and concluded its deliberation on the 24th December, 1932 after taking into consideration the recommendations of the Lothian Committee on franchise and constituencies, of the Percy Committee of Federal Finance and of the Davidson Committee on the specific problems of certain individual States.

On the basis of this report of the Joint Parliamentary Committee the Government of India Bill was framed and passed in the usual manner by the two Houses. The Bill then received the royal assent on the 2nd day of August, 1935 and came to be called as the Government of India Act, 1935. The Act made provision for rigid Parliamentary control. The British Parliament which includes the King-in-Parliament was the sole constitutional authority. The Parliament exercised rigid control over Indian affairs through the Secretary of State for India who was a member of the Cabinet and was responsible to the Parliament not only for his own action but also for those of the several governments and authorities to which he delegated his power. The

Legislatures, both central and provincial were given only a limited sphere of activity and were not allowed to make any law affecting either the authority of the Parliament or any Act of the Parliament passed after 1809.

The Provincial autonomy as prescribed by the Act of 1935 came into force on and from the 1st day of April, 1937.

Sec. 2. New features of the Constitution of 1935.

The Act of 1935 outlined a novel scheme by which the British Indian Provinces and the Indian States would be united in a Federation under the Crown. This proposed Federation was of a peculiar type in which the provinces were not free agents and did not enjoy identical powers with the Indian States.

The Act made provision for a Federal Court which came into being before the establishment of Federation. The Judicial Committee of the Privy Council was allowed to continue its existence as a final Court of Appeal.

The British Parliament still remained the sole authority for amending Indian constitution. Dyarchy was introduced at the centre. The subjects of Administrations were divided. The administration of defence, external affairs and ecclesiastical matter were made over to the Governor-General and his functions in relation to those matters were to be exercised by him in his discretion unaided by the advice of ministry. In regard to other matters the Instrument of Instruction directed the Governor-General to be guided by the advice of the ministers unless in his opinion one of his special responsibilities was involved in which case he could disregard the advice of the ministers and act in his own way.

The Council of the Secretary of State was abolished but the post of the Secretary of State was retained. The said Secretary of State was empowered to interfere in matters in regard to which the Governor-General was authorised to act in his discretion in regard to Defence, Ecclesiastical Affairs, External affairs and was under the control of the Secretary of State for the discharge of these discretionary functions. He exercised supreme power in the sphere of legislation and could freely refuse assent to the Bill passed by the Legislature. Certain bills could not be introduced without his permission. He could make laws on his own responsibility. The Provinces were given autonomy and the spheres of their activity were defined. The Central Executive and the Central Legislature were denied any right to interfere in provincial matters. The responsible form of government was not introduced and the principle of executive pre-eminence still found support and recognised the right of the Governor-General and of

the Parliament to interfere in several matters of detail. The Provincial Governors were not made answerable to the legislature and were given right to initiate legislation and control finance. They were associated with certain special responsibilities in the discharge of which he could override the decision of the ministers. The Legislatures, again, accepted a subordinate status and had to acknowledge the supremacy of the British Parliament in their domain. This reform in the Indian constitution could hardly satisfy the Indian people who had been demanding complete independence or at least a Dominion Status. In the meantime war broke out and Japanese invasion of India became imminent. The British supremacy in India was in danger and the willing co-operation of the Indian people was urgently called for. Sir Stafford Cripps was sent to India with certain proposals for constitutional reforms. These proposals took the form of a Draft Declaration and held out a promise of the grant of Dominion Status with the right to secede from the British Empire after the war. This future right was associated with two safeguards viz., the right of the British Government to determine and secure the guarantee of minority rights and the right of a province not to join the proposed Union of India.

This draft declaration could not inspire confidence and was followed by 'Quit India' resolution passed by the Congress. Cripps' Mission thus failed. The Labour Government came into power in August, 1945. In the following March the Labour Government sent a delegation to India with the Secretary of State at the helm to discuss matters with the Indian leaders with a view to arriving at a settlement. This Mission gave out the following proposals with the consent of His Majesty's Government :— (i) A union of India should be constituted with the British India and the States as units. This union would have charge over foreign affairs, Defence and Communications and would be entitled to raise revenue for the purpose, (ii) The union should have Executive and Legislature composed of British Indian and States representatives. (iii) All other subjects of administration will vest in the Provinces and the States. (iv) Provinces should be free to form groups and each group would be competent to determine the subjects to be taken in common. Bengal and Assam will form one such group. (v) A Constituent Assembly would be set up by the Viceroy to work out a constitution on the above broad principles. This Constituent Assembly would consist of the representatives of the British India and of the States. During the period of making the constitution the administration would be carried on by an Interim Government having the support of the major political parties. The Governor-General would remain at the helm of this purely Indian organisation. The Constituent Assembly was constituted and commenced its session ; but the

Muslim League refused to join it and demanded a partition of India. The scheme of partition was approved by the British Government in a statement made on 3rd June, 1947. This approval was associated with a condition to the effect that a majority of the Muslim majority areas of Bengal, the Punjab, Sind and British Baluchistan voted for such partition. Such vote was taken out and India was divided into two Dominions—India and Pakistan. Next came the transfer of power to the Constituent Assemblies of these two States which assumed such power on and from the 15th day of August, 1947. The needed legislation was effected by the British Parliament by enacting the Indian Independence Act on the 18th July, 1947.

This Act of 1947 set up two Dominions—the Indian Union and Pakistan. Pakistan would comprise Sind, Baluchistan, N. W. F. P., Muslim majority areas in the Punjab, Bengal and in the Sylhet and Cachar districts of Assam. The rest of India will go to form the Indian Union which would include Eastern Punjab and Western Bengal. A Boundary Commission was appointed to define the boundaries of the Muslim majority areas in the Punjab, Bengal and Assam.

The Independence Act of 1947 was an enabling Act and conferred power on the Constituent Assembly of the Dominions to frame their constitution. This constitutions are in the anvil. During the interim period the Government of each Dominion will be conducted in accordance with the provisions of the Government of India Act, 1935 with such modification as the Governor-General might deem necessary. The Governor-General and the Governors would figure as constitutional heads without any special power. They will act on the advice of the Cabinets. During the interim period the Constituent Assembly will act as the Central Legislature and exercise powers under the Government of India Act, 1935. The Dominion Legislature will be competent to exercise sovereign power in the matter of legislation and to repeal freely all acts of the British Parliament as applied to the Dominion and no act of the British Parliament will apply to the Dominions after the 15th August, 1947. The Dominion Legislature will enjoy extra-territorial powers. The king of England will lose his title—the Emperor of India and the office of the Secretary of State for India and that of his advisory body will cease.

As regards the Native States the paramountcy of the British Crown over the States will lapse and for that reason all treaties and Sanads will become inoperative. The States concerned will be free to join either of the two Dominions.

The Act also contains provisions regarding the Armed forces and their services

Sec. 2(a). The Extent of Parliamentary control over Indian Administration under the Act of 1935.

Before the passing of Independence Act of 1947 India was treated as a dependency of Great Britain and it was quite natural that the British Parliament would exercise the sovereign power and determine the type of government which India should maintain. The government of India Act, 1919 emanated from the British Parliament and the Government of India Act, 1935 which repealed the Act of 1919 owed its origin to the same authority. The Governor-General and the Governors who were appointed virtually by the king's ministers had to administer the country in strict accordance with the provisions contained in the Act. The Act was not an exhaustive code and for this reason provisions have been made in the Act for the issue of Instruments of Instructions and orders in Council with a view to supplementing the provisions of the Act.

These Orders in Council, however could not be issued unless the drafts of those Orders were laid before the Parliament and an address had been presented to His Majesty by both Houses of Parliament praying that orders might be made either in the form of the drafts or with such amendments as might have been agreed to by resolutions of both Houses. These provisions clearly indicated the extent of control which the Parliament retained under the Act of 1935 over the details of Indian administration. This intervention of the Parliament and this constitutional innovation which would permit the House of Lords to have control over Indian administration stood the way of progressive realisation of responsible government in India.

There were numerous other provisions which proved in clear terms the rigid control which the British Parliament would continue to exercise over Indian affairs. The Act based as it was on the theory of executive independence authorised the Governor-General and the Governors to promulgate ordinances at any time with respect to matters in regard to which they could act in their discretion or exercise their individual judgment; but in order that this privilege might not be misused it had been laid down that any such ordinance should be in operation for a period not exceeding six months and if by subsequent ordinance the operation of the previous ordinance was extended it should be forthwith communicated to the Secretary of State and should be laid by him before each House of Parliament.

The Act also authorised the Governor-General or the Governors to rule by Proclamations when they were satisfied that situation had arisen in which the Government of Federation or of the Provinces, as the case might be, could not be carried on in accordance with the provisions of the Act. Any such proclamation must be notified to the Parliament.

Proclamation shall be laid before Parliament.

In the sphere of legislation the British Parliament occupied a pre-eminent position. It was the sovereign Legislature and could shape the Indian constitution in any way it liked. It had been laid down in the Act of 1935, that no bill or amendment which repealed, amended or was repugnant to any provisions of any Act of Parliament could be introduced or moved in either chamber of the Federal Legislature or in any Provincial Legislature without the previous sanction of the Governor General.

Supremacy of an Act of the Parliament.

Again, Sec. 11 of the Act reduced the Indian Legislature, federal or provincial to the position of non-sovereign law-making body unable to make any law which affected the sovereign or the Royal family or the succession to the crown or the Sovereignty, dominion or suzerainty of the crown in any part, law of British Nationality of India or the Air force Act, the Army Act or the Naval Discipline Act.

Sec. 3. Powers and Position of the Crown under the Act of 1935.

The Government of India Act, 1935, which wanted to build the constitution of India on a federal basis started with resumption of all rights, authority and jurisdiction already vested in the Secretary of State, the Secretary of State in Council, the Governor-General in Council, or in the Provincial Governments by the Government of India Act, 1919 and re-distributed the same between the Federal Government and the Provinces. The Act specifically prescribes the jurisdiction which the various authorities should enjoy under the new constitution. All other powers were exercisable by His Majesty or on his behalf by the Governor-General or Governors to whom these powers might be delegated by His Majesty. Outside the Federal sphere all powers of His Majesty in relation to Indian States were exercisable by His Majesty and if not exercised by His Majesty should be exercised by His Majesty's Representative for the exercise of those functions of the

The Crown will exercise all powers not specifically given to the Federal and Provincial authorities and may delegate those powers to the Governor-General or Governors.

Prerogative rights.

Crown. Within the Federal sphere all powers in relation to Indian States were to be exercised by the Governor-General.

The rights of the Crown came under two categories, viz., prerogative rights and statutory rights. The prerogatives include the exemption from criminal or civil liability which the Crown enjoyed as well as all rights to grant pardon, reprieve, or remissions of punishment including the sentence of death, rights to all lands in British India and to gold and silver mines, rights to grant honours and to enjoy escheats of land.

Besides these prerogative rights the Crown enjoyed several statutory rights. These rights meant rights conferred on the Crown by the Act and included His Majesty's right of appointing the Governor-General, His Majesty's Representative, Governors, the Commander-in-Chief. Judges of the Federal Court and of Provincial High Courts, the right of issuing instruments of instruction for the guidance of the Governor-General and of Governor, the right of proclaiming the establishment of Federation and of signifying his acceptance of any instrument of accession executed by the Ruler of any State, the right of receiving contribution and payments from the Indian States and of specifying sums required by his representative for exercising the functions of the Crown in relation to Indian States, the right of establishing and constituting the Federal court, the right of constituting by letters patent a High Court in a Province, the right of fixing the pay and allowances of the Commander-in-Chief of His Majesty's Forces in India and of determining the conditions of his services, the right of granting commissions in an any naval, military or airforce raised in India, the right of declaring by Orders-in-Council excluded or partially excluded areas, the right of creating new provinces or altering the existing boundaries of provinces, the right of disallowing Acts passed by the Federal Legislature and the Provincial Legislatures and many other rights enumerated in the provisions of the Act in 1935. The above powers of the Crown are to be exercised by the Secretary of State who is a Minister of the British Cabinet and is, as such, responsible to the Parliament.

Sec. 4. The Secretary of State under the Act of 1935 : his Advisers and department.

The Secretary of State was associated with a body of advisers, not less than three nor more than six in number as the Secretary of State may choose to appoint. They should tender advice on any matter relating to India on which the Secretary of State might desire their advice. The Secretary of State is not bound to act on that advice except in relation to specified matters.

Number and
qualifications
of advisers.

One-half at least of the advisers should be persons who had been in office for at least ten years under the Crown in India and had not ceased to perform in India the official duties under the Crown more than two years before the date of their respective appointments as advisers.

Any person appointed as an adviser to the Secretary of State should hold office for a term of five years and should not be eligible for re-appointment. He might be dismissed by the Secretary of State on the ground of infirmity of mind or body.

Each of the advisers should be paid out of money provided by Parliament an annual salary of £1350. An adviser who at the date of his appointment was domiciled in India was entitled to an additional sum of £600 as subsistence allowance.

As soon as provincial autonomy as defined in the Act came into operation the salary of the Secretary of State and the expenses of his department, including the salaries and remuneration of the staff thereof should be paid out of money provided by Parliament.

The Council of India will be dissolved.

Sec. 5. Position and power of the Secretary of State under the Act of 1935.

The Secretary of State for India remained responsible to the House of Commons for the Government of India and for this reason the Government of India Act, 1935 recognised his power of general control over the Governor-General in so far as the latter is required to act in his discretion or to exercise his individual judgement. The Secretary of State would also exercise his similar control through the Governor-General over the Provincial Governors. In this way the Secretary of State would continue to exercise control over important subjects like Defence, External affairs, the Civil Services, the Reserve Bank and the Federal Railway authority.

He would be the adviser of the Crown in regard to the power of appointment and of the vetoing of bills. In the matter of administration his powers of control would be exercised through Instrument of Instructions and Orders-in-Council. He would retain his control over the public services sometimes directly and sometimes indirectly through the Governor-General and the Provincial Governors.

All these powers of control proved in clear terms that the new constitution did not give us a responsible form of Government

which necessarily implies considerable relaxation of control of the Secretary of State over Indian affairs.

Sec. 5(a). The India Office.

This meant the office of the Secretary of State. It assisted the Secretary of State in the discharge of his function and was placed under the charge of a Permanent Under-Secretary who belongs to Home Civil Service. The Government of India Act 1935 made the expenses of the India office a charge upon the British revenues. Some contribution might be paid by the Governor-General for the performance by this office of certain functions on behalf of the Government of India.

Sec. 6. High Commissioner for India under the Act of 1935.

The Government of India Act, 1935 made provision for the appointment in the United Kingdom of a High Commissioner of India. The High Commissioner was appointed by the Governor-General and received such salaries as might be prescribed by the Governor-General, exercising his individual judgment. He held office for five years and his salary which was payable out of the Indian Revenue had been fixed £3000 per year. He should perform such functions and make such contracts on behalf of the Government of India as the Governor-General might from time to time direct. His main functions were (i) procurement of stores for the Government of India (ii) promotion of Indian trade and of education of Indian students prosecuting studies in England. He might with the approval of the Governor-General and on such terms as might be agreed, perform similar functions on behalf of a province.

Appointment :
High Commis-
sioner and
his function

Sec. 7. The Central Executive during the interim period.

Under the Government of India Act, 1935 as modified by the Independence Act of 1947 the Executive authority of the Dominion is to be exercised on behalf of His Majesty by the Governor-General either directly or through officers subordinate to him.

The Governor-General is appointed by His Majesty on the advice of the Prime Minister of India. He has lost his special power and now figures as a constitutional head in the machinery of administration. He still enjoys certain administrative powers in the matter of appointment of ministers, judges of the Federal Court, the Advocate-General of India, the Auditor-General, the members of the Federal Public Service Commission, the Governors and the Chief Commissioners of the provinces, the Judges of High Court. In all these matters he is to act on the advice of the Ministers.

In the domain of legislation he enjoys considerable powers. He can address the Dominion Legislature or send messages to it with respect to any Bill. He can give his assent to or withhold his assent from a bill passed by the Dominion Legislature. He can send back a bill for reconsideration of the Dominion Legislature. In case of emergency he can make ordinances which will remain valid for six months. His previous sanction is necessary for the introduction in the Dominion Legislature of any Bill which imposes or varies any Tax or Duty in which the provinces are interested. He can give his assent to or withhold his assent from a bill reserved for his consideration by the Governor of a Province or return it for reconsideration by the Provincial Legislature. He may authorise either the Dominion Legislature or the Provincial Legislature to enact any law with respect to any matter not allocated by the Act to the centre or the Province.

The Governor-General is entitled to issue proclamation of Emergency whenever the security of India is threatened by war and empower the Dominion Government to give direction to the provinces as to the manner in which their executive authority is to be exercised. During this emergency period the Dominion Legislature shall be competent to make any law on any subject. Under the amended Act the Governor-General has lost his power to summon, prorogue or dissolve the Dominion Legislature.

The Council of Ministers.

The responsible system of Government of the type which prevails in Great Britain is now in vogue in the Dominion of India. The real power is wielded by the Council of Ministers the members of which are formally appointed by the Prime Minister on the recommendation of the Leader of the party in power. The council of Minister as at present constituted consist of members of the Congress and other important parties. These ministers are collectively responsible to the Legislature and as such must become members of the Legislature. If they are not already members they must become so within six months of their appointment.

Sec. 8. The Central Legislature during the interim period.

Until the new constitution is drawn up the Constituent Assembly of India will function as the Dominion Legislature. Indian Dominion has therefore a unicameral legislative consisting of as many as 303 members with the addition of a few more members to represent the States which become members of the Indian Union.

The Legislature is found to exercise in addition to ordinary legislative functions certain other functions with a view to centralising administration and finance.

The legislative power of the Dominion Legislature is exercised in relation to 59 subjects enumerated in the Federal Legislative List and other 36 subjects enumerated in the concurrent Legislative List.

The Federal Legislative list includes other among the following subjects:—Naval, military, air forces, external affairs, ecclesiastical affairs, currency, coinage and legal tender, public debt of the Federation, posts and telegraph, census, emigration, migration, maritime shipping and navigation, Federal railways, explosives, corporations, development of industries, Insurance, banking, naturalisation. The Concurrent List in which the Dominion Legislature is authorised to interfere and make laws includes criminal law marriage and divorce, transfer of property, factories, news papers, trade unions, welfare of labour, unemployment Insurance, electricity, trade and commerce in and production and distribution of products of industries under Federal Control.

The Governor-General may in times of emergency extend the power of the Dominion Legislature to enact law relating to matters which strictly fall within the provincial List.

The Legislative subordination which was the characteristic mark of the Legislature as constituted under the Government of India Act, 1935 has ceased to exist. The Indian Legislature now occupies the independent status and is competent to enact laws overriding any Act of the British Parliament. No bill has now to be reserved for His Majesty's assent. The power of veto which the executive head still enjoys over legislation means no real power because the Governor-General has to exercise this power in accordance with the advice of the cabinet. The power of making ordinances is to be exercised in a similar manner. Hence the Indian legislative can freely make laws with close reference to the real interest of the people unhampered by the Executive interference which marked the legislative process before the passing of the Independence of India Act, 1947.

The Indian Legislature exercises substantial control over the domain of administration. The council of Ministers which is composed of ministers who have seats in the Legislature is held collectively responsible to the Legislature. The Legislature, again, keeps a vigilant eye over the actions of the Executive and can freely ask questions touching matters of administration, withhold supply of fund and pass motions of no confidence. The Executive again has majority of supporters in the legislature with the result that the Legislature is found to act in harmony with the executive.

In the matter of finance the control of the Legislative is keenly felt. The annual financial statement as prepared by the

Finance Minister and the proposals for expenditure have to be submitted to the Legislature in the form of demands for grants. Demands for grants with the exception of salary and allowances payable to the Governor-General and of the judges of the Federal Court and the Debt charges must be voted upon and passed by the Legislature. Again, no demand for grant can be made except on the recommendation of the minister. In the same way any financial bill can not be introduced except on the recommendation of the Government.

Sec. 9. The Judiciary : The Federal Court.

The constitution of a Federal Court as prescribed by the Government of India Act, 1935 was established in October 1937.

Under the provision of this Act of 1935 this Federal Court is to consist of a Chief Justice and number of puisne judges not exceeding six appointed by the Governor-General. The number of judges can however be increased if the Dominion Legislature presents an address to the Governor-General in that behalf. Every judge of the Federal Court shall hold office until he attains the age of 65 years but may be removed by His Majesty on the grounds of infirmity of body or mind or misbehaviour when the Judicial Committee of the Privy Council on a reference being made to them by His Majesty report on the advisability of such removal. Their salaries are to be determined by the Governor-General and must not be valid after their appointment to their disadvantage.

The Federal Court has been given threefold jurisdiction, original, appellate and advisory. In the exercise of its original jurisdiction it can decide any dispute between the Dominion, any of the provinces or any of the acceding States provided the dispute involves any question on which the existence or the extent of a legal right depends.

In the exercise of its appellate jurisdiction it is competent to hear appeals from the High Courts in India whenever the High Court certifies that the dispute involves a substantial question of law as to the interpretation of the Government of India Act or any order in Council or the Indian Independence Act or any order made thereunder. The Dominion Legislature has enlarged this appellate jurisdiction by passing Act I of 1948 which provides that no direct appeal shall lie to the Judicial Committee of the Privy Council.

The Federal Court is also competent to hear appeals from the High Court of any acceding state under the aforesaid circumstances as well as when the dispute touches the legislative or the executive authority vested in the Dominion by virtue of the Instrument of accession.

The Court may be consulted by the Governor-General on the question of laws involving matters of administration. From the decision of the Federal Court an appeal may lie to the Judicial Committee of the Privy Council.

Sec. 10. Administration of Provinces : The Governor.

The executive authority of a Province is vested in the Governor appointed by the Governor-General except in the case of Governor holding office from the date of the establishment of Dominion. In the latter case the Governor owes his appointment to His Majesty.

Like the Governor-General these Provincial Governors have lost their special powers and responsibilities and now figure as so many constitutional heads with little real powers to exercise. He no longer enjoys the power conferred by Section 93 of the Government of India Act, 1935 which provided for suspending the Provincial Constitution and for putting the entire provincial administration in the hands of the Provincial Governors. The power to enact Governor's Act has been taken away and his power to issue ordinances has been severely restricted. He still can summon and prorogue the Legislature. He may dissolve the Legislative Assembly.

The Governor of a Province still enjoys certain legal powers. He appoints the ministers and dismisses them. He appoints the Advocate-General and nominates certain members to the Second Chamber in Madras, Bombay, Bihar and United Provinces. He may address or send message to the Legislature. He may give assent to or withhold assent from a Bill or reserve the Bill for the reconsideration of the Governor-General. He may send back a bill for reconsideration of the Legislature. He may issue ordinances during the recess of the Legislature subject to certain safeguards enumerated in the Constitution. He may make regulation for the peace and good government of the excluded or partially excluded areas.

All these powers are no real powers in view of the fact that our Governors have got to exercise them in accordance with the advice of the Ministers who are held responsible to the Legislature.

Sec. 11. The Council of Ministers.

The Indian Independence Act, 1947 has brought the Council of Ministers into prominence. This Council of Ministers are entrusted with the executive departments and held responsible to the legislature for the performance of their executive function. In order to ensure their responsibility the ministers are chosen by

the Leader of the party which commands majority in the Legislature. Every minister chosen must have seat in the Legislature within six months from the date of appointment.

The Ministers are collectively responsible to the legislature for their policy and functions. They must resign in a body if they fail to command the confidence of the Legislature.

Sec. 12. The Legislature.

There are at present nine provinces within the Indian Dominion. These provinces include Madras, Bombay, United Provinces, Central Provinces and Berar, Bihar, Orissa, Assam, West Bengal and East Punjab. Each of these provinces has a legislature. In Bihar, Bombay, Madras and the United Provinces the Legislature consists of two chambers known respectively as Legislative Council and Legislative Assembly. Each of the other provinces has a single chamber. The Second Chambers in Assam and in Bengal was abolished by the India (Provincial Legislatures) order. Again, there has been an abolition of the European territorial constituencies in all provincial legislatures and we also find a drastic curtailment of the heavily weighted representation enjoyed by the European Commerce and industry in Bengal and European planting in Assam. Provision has also been made for the Constitution of the Legislative Assemblies of the divided provinces and for varying the Constitution of Assam Legislative Assembly on account of the transfer of a part of the Province to East Bengal.

The Legislative Council is a permanent body one-third of its members retiring every three years. The members of the Legislative Council varies in number from Province to Province. In Madras the total number varies from 53 to 55. In Bombay the number varies from 28 to 29. The Legislative Council of the United Provinces commands the largest number varying from 57 to 59 while in Bihar the Legislative Council has a number of members varying from 28 to 29. The members of the Legislative Council are mostly elected by direct representation from the general and Communal Constituencies; of the remaining members some are elected by the Legislative Assembly of the Province while others are nominated by the Governor. The electorate is composed of propertied classes. In Madras the right of franchise is restricted to persons paying income-tax assessed on a total income of not less than Rs. 7,500, holders of estates with an annual income of not less than Rs. 1,500 and pensioners drawing of pension of not less than Rs. 250 per month.

The Legislative Assembly consists of members elected directly by male and female electorates. The male seats are filled up from different constituencies—General, Backward areas and

tribes, Muslim; Anglo-Indian, Indian Christian, Commerce, Industry, Mining and Planting, Landholders, University and Labour. The Female seats are filled up from General, Muslim and Indian Christian Constituencies. The number of members in the Legislative Assembly varies from 60 in Orissa to 226 in the United Provinces. The franchise is based upon property qualification of a lower degree and sometimes associated as in Madras with Residence qualification.

The Assembly has a life of five years unless sooner dissolved.

The legislative powers of the provincial Legislature are confined to matters enumerated in the provincial and the concurrent Legislative Lists. Subject to this limitation that when the provincial law is in any way repugnant to the Dominion Law on the subject the provincial Law shall to the extent of repugnancy be void.

The consent of the Governor is required before a bill passed by the Provincial Legislature may become an act. The provincial Governor may give his assent to or withhold his assent from the bill, return the bill for reconsideration or reserve the bill for consideration of the Governor-General. This consent is now automatically obtained because the Governor has now to act in accordance with the advice of the ministers who are held responsible to the Legislature.

The Laws passed by the Provincial Legislature are supplemented by ordinances issued by the Provincial Governor. These ordinances have force and validity for a temporary period of time. The Provincial Legislature enjoys considerable financial power. No revenue can be raised without its consent. All demands for grants with the exceptions of Governor's salaries, debt charges, salaries of ministers, Advocate-General and judges are to be submitted to the vote of the Legislature or of the Lower House where two chambers exist. If the demand for grant wins the approval of the Legislature, money may then be issued out of the Public Exchequer. Financial bills passed by the provincial Legislature may be vetoed by the Provincial Governor who may also return the bill for reconsideration or reserve the same for the consideration of the Governor-General in which case the latter can exercise his veto power. The consent of the Legislature means the consent of both the Houses in provinces which have bicameral legislature. When a bill is passed by the Legislative Assembly it is sent to the Legislative Council. If the Legislative Council fails to pass the bill before the expiration of twelve months from the date of its reception, the Governor may summon a joint sitting to consider and vote on the bill. If in this joint sitting the bill wins the consent of the majority the bill is deemed to have been passed.

Sec. 13. The Judiciary.

At the helm of the judicial organisation there still exists the Judicial Committee of the Privy Council. This consists of the Lord Chancellor, ex-Lord Chancellors, the Lords of Appeal in ordinary and Indian and Dominion judges. Appeals used to lie to this Committee from the decisions of the High Courts subject to this limitation that in civil cases the amount involved or the value of the subject matter is not less than 10,000 and if the decision affirms the judgment of the inferior court, the original suit involves a fundamental question of law. In criminal cases the fitness of appeal is to be certified by a High Court before any appeal may lie to the Privy Council. An appeal also lies to the Privy Council from the decision of the Federal Court if the said decision relates to the interpretation of the Government of India Act or if leave for such appeal has been taken from the Federal Court or from His Majesty-in-Council.

The Federal Court Enlargement of Jurisdiction Act of 1947 has prohibited any direct appeal from the High Court to the Privy Council from February, 1948.

Sec. 14. Federal Court.

The Federal Court was established in 1937 in accordance with the Provisions of the Government of India Act, 1935. The organisation and jurisdiction of this court has already been discussed. Next comes the High Court which enjoys both original and appellate jurisdiction and retains power of control and supervision over the judicial system of the province.

Judges of the High Court are appointed by the Governor-General and hold office until they attain the age of sixty years. They may be removed before the expiry of the term on the ground of misbehaviour or of infirmity of body or mind if the Federal Court on reference being made to it by the Governor-General reports that the judge ought on such ground to be removed. The High Courts of Calcutta, Bombay and Madras have both original and appellate jurisdictions while other High Courts have only appellate jurisdiction. The High Courts again, enjoy both civil and criminal jurisdictions. An appeal lies from the decision of the High Courts to the Federal Court when the dispute raises constitutional issues regarding the interpretation of the Government of India Act, 1935.

Below these High Courts there exists in each district a court of the District and Sessions Judge which exercises appellate jurisdiction over the decision of subordinate courts both civil and criminal and enjoys considerable original jurisdiction in civil and

criminal cases. Such judges are appointed by the Governor in consultation with the High Court.

The District Judge is aided in his judicial work by a number of subordinate judges. The lowest civil court is the court of Munsif. These Munsifs are appointed by the Governor from a list of persons selected by the Provincial Public Service Commission and enjoy definite pecuniary and territorial jurisdiction. On the criminal side we find the District Magistrate, the Sub-Divisional Magistrates, the Deputy Magistrates and other lower-in-rank Magistrates. They try criminal cases under the supervision of the District Magistrate.

Sec. 14(a). The Jury system.

In Criminal cases involving serious charges the accused may be committed to sessions where the judge has to try the case with the help of the Jury or assessors. The decision of the assessors does not bind the judge while the verdict of the Jury is binding. When the Jury has given a manifestly wrong verdict, the sessions judge can refer the case to the High Court which may set aside or modify the finding of the Jury.

In the High Court the Jury trial may be demanded by the accused. The Jury consists of not more than nine and not less than five jurors. The jurors' verdict when unanimous is binding upon the Judge.

Sec. 15. Provincial autonomy : Administrative relation between the Centre and the Provinces.

The Government of India Act, 1935 ushered in Provincial Autonomy by prescribing a list of Provincial subjects in regard to which the Provincial Legislature would be competent to legislate unhampered by any central interference. The Central Legislature was given separate and independent jurisdiction in regard to subjects enumerated in the Federal List. The Government of India Act, 1935 made provision for a Federal Court which would protect the provincial rights against unauthorised encroachment by the Centre.

This provincial autonomy is no doubt an improvement upon the relation which the provinces bore with the centre under the Government of India Act, 1919. Nevertheless there was scope for central interference and for that reason the provincial autonomy fell short of complete independence of central control. The important limitations on provincial autonomy are noticeable in the following provisions :—

(a) The Dominion Legislature which now occupies the position of the Central or Federal Legislature may enact laws in

respect of Provincial subjects during emergency. (b) When bills are reserved by the Provincial Governor for the consideration of the Governor-General the latter is competent to veto such laws. (c) The Dominion Government may give direction to a province as to the manner in which the latter should exercise its executive functions with a view to preventing grave menace to the peace or tranquillity of India or any part thereof. (d) No provincial Government should exercise its executive functions in such a way as to impede or prejudice the exercise of executive functions by the centre. (e) When the security of India is threatened by war, the Dominion Government may proclaim a state of emergency and give necessary direction to any province for regulating its executive functions. (f) The Dominion Government may give direction to any province for the construction and maintenance of means of communication for military purposes. (g) The Dominion Legislature may confer powers and impose duties outside the statutory domain but the entire cost of administration in regard to these extended matters shall be borne by the Dominion. (h) The provincial Government is competent to borrow in the open market, but when debt is to be incurred outside India consent of the Dominion Government is to be taken. Again, if the provinces are already indebted to the Central Government, the Provincial Government cannot borrow money within India without the consent of the Dominion Government.

Sec. 16. The process of Law-making (Provincial).

A bill incorporating proposed legislation may be introduced in either House of the Legislature by any member with the exception of money bills which must originate in the Lower Chamber. In case of bills piloted by the Government this first stage consists in mere publication of the Bill in the official Gazette. Next comes the second reading when the Bill is moved for consideration of the House. This is done in case of urgent bills. In other cases the bill may either be referred to a Select Committee for examination and report or be circulated for inviting public opinion. If the House agrees to take up the bill for consideration, the principles of the bill are discussed. Any amendment may be moved. The Bill is examined clause by clause. Every amendment is put to the vote. If the bill is referred to a Select Committee the House is to wait till that committee submits the report after examination. The report is published in the Gazette and the mover then asks the House to consider the report. The House then proceeds to examine the Bill when amendment may be moved.

If the motion for circulation of the Bill is accepted, the bill is circulated among the interested persons and their views are solicited. After such circulation the bill is referred to a Select

Committee on a motion made by the mover. The Bill must then go through the usual procedure enumerated above. The Bill then enters the third stage when the bill is read for the third time. At this stage only formal amendment can be made. If the bill is passed by the House in which it is introduced, it is sent to the other chamber (if there are two chambers). In the latter chamber the bill again has to pass through the same procedure. If the bill is passed by the said House, the bill is sent to the Governor for assent. The Governor may assent to the bill in which case the bill becomes an act. If the Governor withholds his assent and the bill had originated in the Upper House, the bill lapses. The Governor may also reserve the bill for the consideration of the Governor-General in which case the bill cannot become an act unless the Governor-General assents to it. The Governor may also send the bill for reconsideration of the Legislature. He may convene a joint sitting of the two Houses where they exist when a bill passed by the Lower House stands rejected in the Upper House or passed with certain amendments which the Lower House is unwilling to accept. If the bill finds a majority in the joint sitting the bill is presented to the Governor for his assent.

Sec. 17. Control of the Provincial Legislature over financial matters.

The Provincial Legislature has substantial control over the finance of the Province. The provincial budget which contains proposals for raising or spending money must be introduced in the Legislative Assembly with the exceptions of expenditures charged upon the revenues of the Province. All items of expenditure must be submitted to the Lower House in the form of Demands for grants. Each Minister presses for the demands for grants touching his department. The motions for grants are debated and voted upon by the House. All demands for grants must win the approval of the House within 20 days and not more than 2 days may be devoted to the discussion of a particular grant. The Assembly may refuse or reduce the demand. Such refusal means a censure of the Ministry. The Upper House, if any, may discuss the demands for grants but cannot vote upon such grant.

Finance Bills which purport to impose taxation must be introduced in the Lower House on the recommendation of the Governor. Such bills must however be passed by both the Houses of the Legislature.

Sec. 18. Should the Second Chamber as at present constituted be retained?

The Government of India Act, 1935 makes provision for the constitution of Second Chamber in some of the Governor's pro-

vinces. The object of the Second Chamber is to ensure due and intelligent consideration of legislative measures by men who are above the ordinary rank of the masses who participate in the election of members of the Lower House. In the constitution of the Upper House higher qualifications are insisted upon for the Electorate. In some provinces, as in Bihar indirect election by the members of the Lower House is in vogue. All these provisions exhibit clearly a sense of distrust in the capacity of people to choose the best type of men who are sufficiently competent to discharge the onerous responsibility of the legislators. The existence of a Second Chamber also involves a drain on the Public Exchequer and the poor provinces of India can seldom afford to indulge in the luxury of a Second Chamber. The Second Chamber as at present constituted will introduce a conservative element in the Legislature and stand in the way of progressive legislation at the instance of the Lower House.

Nevertheless, the utility of a Second Chamber as a revising body cannot be denied and the efficacy of such a Chamber has been appreciated in the civilized world.

Sec. 19. Provincial autonomy and its critics : How did it work under the Constitution of 1935.

The Government of India Act, 1935 introduced a system of Government under which the provinces were given autonomy in the administration of subjects included in the Provincial List. This autonomy fell far short of the complete independence by reason of the authority which the Governor-General of India still enjoyed over provincial matters. The said Governor-General could give direction to the Governor in the exercise of his executive function with a view to preventing menace to the peace and tranquillity of India. Again, the Federal Legislature could during proclamation of emergency legislate on matters included in the Provincial List. The Governors were made subordinate to the Governor-General in so far as they exercised special powers under the Government of India Act. These provisions for central interference told upon the autonomy of the provinces. This sham provincial autonomy could not work successfully in the Provinces. The critics argued that such autonomy would surely fail to achieve its objects so long as it was not associated with the responsible form of Government. The Government of India Act, 1935 which conferred special powers upon the Provincial Governor could not ensure responsibility to the Legislature. This irresponsible executive head of the provincial administration was held responsible to the Governor-General for his discretionary function and could flout the opinion of the Cabinet minister at his sweet will and

pleasure. He would freely enact laws against the decided opinion of the representatives of the people. The result was that the provincial administration failed utterly to command confidence of the people. The Congress ministers in Provinces where the Congress Party was in power demanded an assurance from the Governors that the latter would in no case over-ride their opinion; but the Governors concerned failed to give such assurance and the ministers in the Congress Provinces tendered their resignation. This created a deadlock which had to be removed by a compromise by virtue of which the provincial Governors in the Congress Provinces ceased to exercise their special powers. Trouble, again, arose by reason of the interference of the Governor-General in the decisions of the U. P. and Bihar ministries in regard to the release of political prisoners. The directive issued by the Governor-General against such release affected the prestige of the afore-said ministries and they could not remain in office. The deadlock was again removed by a compromise and the ministers did give effect to their decision regarding the release of political prisoners. The next occasion for friction with the Administration was in the year 1939 when war against Germany was declared.

The Congress ministries did not favour India's participation in the war unless the British Government informed them of their objectives in the war. The British Government was not ready to declare these objectives and the Congress Ministries protested against the involuntary participation of India in the prosecution of war against Germany and again tendered their resignation. The constitutional machinery witnessed a breakdown which was proclaimed under Sec. 93 of the Government of India Act.

The repeated resignation of the Congress Ministers proved beyond any shadow of doubt that the machinery of administration with its sham provincial autonomy was an utter failure. The blame could not be thrown on the shoulders of the Congress Party because in other provinces where the Congress Party was not in power the ministers like Mr. A. K. Fazlul Huq and Mr. Allah Bux were forced to resign although they commanded majority in their respective Legislatures and Dr. Shyama Prasad Mukherjee tendered his resignation because he could not tolerate the ugly interference of the Governors.

Sec. 20. Central and Provincial sources of Revenue ; the Financial relation between the Central Government and Provincial Government.

With the introduction of provincial autonomy under the Government of India Act, 1935 the Central Government will come

to enjoy the sources of revenue which will be at the disposal of the Federal Government when established and the federal taxes will be construed to mean taxes imposed by the Indian Legislature. The Central Government will thus come to enjoy exclusively the (i) import duties, (ii) corporation tax, (iii) contribution from railways and receipts from other commercial undertakings of the Government of India, (iv) profits of coinage. Besides these exclusively central sources of revenue the Central Government may also retain a share of the net proceeds from the following heads viz., salt duties, export duties, excise duties except on alcoholic liquors, drugs and narcotics, but as Sir Otto Niemeyer has recommended that Central Government shall not reserve for itself more than 32½ per cent of net proceeds of the jute export duty. The Central Legislature shall have power to impose surcharges on certain provincial taxes and thus to augment its revenue. The Central Government shall also enjoy taxes on income of the officers of the Central Government. Other taxes on income save and except the taxes on agricultural income shall be levied and collected by the Central Government which shall assign a prescribed percentage of the net proceeds of the provinces.

According to Government of India (Distribution of Revenues) order, 1948, 50% of the Income Tax proceeds is to be distributed among the Provinces as per under-noted percentages and the remaining 50% falls to the share of the Central Government :— Madras 18, Bombay 21, U. P. 19, West Bengal 12, Bihar 13, C. P. and Berar 6, Assam 3, East Punjab 5, Orissa 3.

The provinces shall enjoy exclusively the following sources :—

(1) Land Revenue, (2) Excise duties on alcohol, drugs and narcotics, and countervailing duties on similar goods, produced elsewhere in India, (3) Stamps in respect of documents not included in the Federal List, (4) Forests, (5) Provincial commercial undertakings, (6) Taxes on mineral rights, and on land, buildings, hearths and windows, (6a) Duties in respect of succession to agricultural lands, (7) Taxes on luxuries, (7a) Sales taxes, (8) Fees from the administration of any provincial subject, (8a) Taxes on professions trades and callings. They shall also enjoy (i) the net proceeds of the following taxes collected by the Federation; (a) Duties in respect of succession to property other than agricultural land, (b) Stamp duties on bills of exchange etc., (c) Terminal taxes on goods and passengers, (d) Taxes on railway fares and freights.

(ii) Certain shares in the proceeds of the following taxes :— (a) Salt duties. (b) Export duties; in the case of jute export duty 62½ per cent of the net proceeds, (c) Excise duties except on alcoholic liquors, drugs and narcotics.

(iii) Taxes on agricultural income and certain shares in the residual income taxes.

(iv) Some Provinces also get certain subventions from the Central Government. In 1948-49 budget we find provisions for granting subvention to U. P., Eastern Punjab, Assam and Orissa.

Sec. 21. The Indian Public Service.

The Public Services in India were formerly classified under three main divisions:—

- (i) All-India Services,
- (ii) The Central Services and
- (iii) The Provincial Services.

Under the Government of India Act, 1935 the pay and allowances of the Commander-in-Chief of His Majesty's Forces in India and the conditions of his service were to be such as His Majesty-in-Council might direct.

Appointment to the Civil Services of and Civil posts under the Crown in India were, after the commencement of Part III of the Government of India Act, 1935 to be made in the case of services of the Government of India by the Governor-General or such person as he may direct, and in the case of services of a Province by the Governor or such persons as he may direct. The condition of service of a person appointed to such civil post shall be such as might be prescribed by the Governor-General or the Governor as the case might be. Every person who was a member of a Civil Service of the Crown in India held office during His Majesty's pleasure and could not be dismissed by an authority subordinate to that by which he was appointed. Sex could not be regarded as a disqualification for being appointed to any Civil Service or Civil Post under the Crown in India unless specifically excluded by an order of the appropriate authority.

The Secretary of State did make appointments to the Indian Civil Service, the Indian Medical Service, and the Indian Police Service until Parliament otherwise directed. The officers appointed by the Secretary of State enjoyed the following important privileges and rights:—(a) a right of appeal to the Secretary of State against orders passed by an authority in India—(i) of censure or punishment, (ii) affecting disadvantageously the conditions of his service and (iii) terminating his employment before the age of superannuation, (b) a right of complaint to the Governor or Governor-General against any order from an official superior affecting his conditions of service, (c) a right to the concurrence

of the Governor or Governor-General to any order of posting or to any order affecting emoluments or pensions, and any order of formal censure, (d) right to have the conditions of service regulated by the Secretary of State, (e) the right of the exemption of all sums payable to him or to his dependents from the vote of either chamber of the Legislature.

Subject to the statutory privileges rules could be made by the appropriate Legislature or by the appointing authority with a view to imposing conditions of appointment.

The Governor-General and the Provincial Governors were charged with special responsibilities for protecting the rights of the civil servants. The Indian Independence Act and the consequent amendments have dispensed with the control of the British Government over Indian Civil Services. The Dominion of India and the Provincial Governments have been given complete control over the Civil Services in India and can freely recruit civil servants and frame rules governing those services. They are aided in their activity in this connection by the Public Service Commission. These Services have already been given an assurance from the Constituent Assembly that the new Constitution will contain provisions for safeguarding their time-honoured privileges.

Sec. 22. The relation between the Civil Servants and the Ministers under the Act of 1935.

The members of Civil Services in India occupied in the past by reason of their privileges an enviable position in the machinery of administration. In fact they enunciated the policy of administration and gave effect to the same. They remained almost uncontrolled by any authority subordinate to that by which they were appointed. Since the inauguration of Montague-Chelmsford Reform this bureaucratic independence witnessed considerable loss of power in the formulation of policy which was made over to the ministers. Nevertheless these members acted as Executive Councillors and Secretaries to the Governor-General and Governors, and could play an active part in the determination of policy. The Government of India Act, 1935 went a great way in reducing the power of the bureaucrats in the formulation of policy and has charged the ministers with responsibility in the said matter. The members of the Civil Service used to act as secretaries to the various departments placed under the charge of ministers and had to discharge their duties under their direction and control. The ministers, however, could not affect in any way the condition of service of the civil servants and take away the statutory privileges which they enjoyed. This absence of control of the ministers over their subordinates was an anomaly which stood in the way of successful working of Provincial autonomy.

Sec. 23. Public Service Commissions.

In the absence of an agreement between two or more provinces to the contrary there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province. Sec. 318 of the Government of India Act, 1935 provides that the Federal Service Commission shall before the establishment of Federation perform in relation to British India the functions which they are authorised to perform when Federation has been established. The chairman and other members of this Federal Commission shall be appointed by the Governor-General in his discretion and those of a Provincial Commission shall be appointed by the Provincial Governor in his discretion. At least one-half of the members shall be persons who at the dates of their respective appointment have held office for at least ten years under the Crown of India.

Rules regulating the number of members.

In the case of the Federal Commission the Governor-General in his discretion may make rules regulating the number of members, their tenures of office and their conditions of service. Similar provisions may be made by the Governor of each province with regard to the Provincial Commission. The Chairman of the Federal Commission shall not be eligible for further appointment under the Crown in India.

The Federal and the Provincial Service Commissions thus constituted shall conduct examinations for appointment to the services of the Federation and the services of the provinces respectively unless the Secretary of State, the Governor-General in his discretion and the Governor in his discretion, otherwise directed by regulations with regard to appointments in which they are concerned. Subject to these regulations the Provincial Public Service Commissions shall be consulted in matters relating to recruitment, promotion and transfer of Civil Servants and in disciplinary matters. The Public Service Commission will have no right to determine the percentage of service to be allocated to different communities. Such allocation must also be left in the hand of ministers.

The Commission shall be consulted in regard to certain specific matters.

The Public Service Commissions shall exercise such other functions as may be assigned to them by appropriate Legislatures. The expenses of the Federal or a Provincial Public Service Commission including any salaries, allowances and pensions payable to the members or staff of the commissions shall be charged on the revenues of the Federation or as the case may be on the revenue of the Provinces.

How the expenses of the commissions shall be met.

Sec. 24. The Administration of the District.

For the purpose of general administration the whole province is divided into a number of divisions which comprise from four to six districts. These districts, again, are subdivided into smaller units known as subdivisions.

The officer-in-charge of a division is the Commissioner. He is generally a senior member of the Indian Civil Service. He supervises the administration of the Division and acts as a court of appeal in revenue cases.

Next comes the Collector who is in charge of a district and controls the revenue and administration. He has various functions to perform. He is in charge of the district treasury and administers the various sources of revenue such as excise and stamps. He is the returning officer for the district constituencies of the legislative councils. He is responsible for the welfare of the people, gives advice in matters of co-operation, famine relief and makes arrangement for loans to the cultivators. He has certain judicial powers and acts as a Magistrate in criminal cases. He is at the same time responsible for the maintenance of peace and order within the district and has to direct the activities of the police accordingly. He has to act both as a prosecutor and as a judge. He thus combines in himself the functions of the Executive and the Judiciary contrary to the principles of separation of powers.

There are several other district officials such as the Civil Surgeon, the Forest officer, the District Engineer and the District and Sessions Judges, each having definite functions to perform.

Subordinate to the Collector of the District there is the Sub-Divisional officer who is in the charge of a subdivision and has to perform many executive and judicial functions.

Sec. 25. The Native States: their present position.

The relation of the Native States with the British Crown which was once Paramount Power in India was governed by treaties and agreements. By virtue of these treaties and agreements the native princes enjoyed autonomy in the sphere of internal administration. Some of the biggest States maintained courts of law and police organisations and had the privileges of coining money and maintaining Army. Nevertheless these Native States owed their allegiance and loyalty to the British Crown which had the right of retaining in each State a British Resident or Agent whose duty was to guide and control the Ruler and report his conduct to the

British authorities. The Crown could also interfere in the matter of administration of Native States for safeguarding the Imperial interest and for protecting the subjects of Native States from the tyranny or mis-government of the Rulers. The Native States again, depended upon the paramount power for their defence and protection and were under obligation to render any assistance which the said Paramount Power might demand. They had no right to regulate their relation with foreign States and declare war without the authority of the British Crown. These Rulers of Native States did not enjoy sovereignty, as their administrative powers were regulated by the British Crown.

Even in the internal affairs the control of the Paramount Power was supreme. The succession of the Ruler required confirmation by the Paramount Power. In case of disputed succession the decision of the Paramount power was final. The said Paramount Power also did interfere in the administration of Railways, posts and telegraphs. The Paramount Power used to intervene whenever the imperial interests or the general welfare of the people were in jeopardy at the instance of the Ruler of the State.

The Government of India Act of 1935 gave the Native States the right of joining the Federation when established under certain conditions. They came to bear direct relation with the Crown, and His Majesty's Representative was to discharge the functions of the Crown.

The Indian Independence Act of 1947 makes provision in regard to the Native States. Section 7 of the said Act takes away the Suzerainty of His Majesty over the States and nullifies all agreements and treaties made by those states with His Majesty. But this statutory provision will not invalidate the agreements in regard to customs, transit and communications which will remain in force till they are denounced by the Rulers and superseded by new agreements. The States have been given the option of joining in one of the Dominions.

Section 6 of the Indian Independence Act incorporates provisions for accession of a State by executing a Instrument of Accession accepted by the Governor-General. Such Instrument shall specify the subject ceded by the Ruler to the Dominion and the limitations imposed on the powers of the Dominions in regard to matters which concern the State. Many States have now acceded to the Dominion of India and have ceded matters of general concern—Defence, External Affairs and communications—to the Dominion Government for administration.

Many of these States have combined and formed union among themselves. As a result of such merger we find at present the

following Unions—United States of Saurashtra, Matsya Union, Vindya Pradesh and Patiala and East Punjab States Union.

Each of these Unions becomes by virtue of merger a new composite State with right of framing its own constitution. The merging States lose their separate entity but their rulers are guaranteed the rights and privileges of their order including privy purse. This union chooses its Ruler-President known as Rajpramukh from among the rulers of the merging states. Bikaner and Jaipur have decided to join the Rajasthan Union and thus to form Maharajasthan State. Some States have thought it convenient to merge with neighbouring provinces of the Indian Union. In this way the Eastern States of Orissa became integrated with Orissa by signing a merger agreement. The States of Seraikella and Kharswans became integrated with Bihar. Mayurbhanj States became integrated with Orissa and the Deccan States with Bombay. Baroda and Kolhapur have decided to merge with Bombay.

Some more States came to be administered directly by the Centre with the help of a Chief Commissioner. These States have been classified under three groups—Himachal Pradesh comprising 24 Hill States, Bilaspur, Cutch and Jaisalmer. There are certain non-viable States which still retain their separate entity. These include Cooch Bihar, Tripura, Manipur, Rampur, Benares, Garhwal and Khasi Hill States.

The autocracy of the Ruler has yielded place to democracy. The States which have merged with the provinces have adopted the democratic organisation which prevails in the provinces. The Unions of States have held conferences and finally decided to maintain a Central Government with a Central Secretariat, an independent Judiciary, Revenue Board and Public Service Commission. They have also agreed to reallocate the seats of the connected States to the Constituent Assembly on the basis of popular representation. Powerful States like Baroda and Jodhpur could not ignore the popular demand for representation and had to adopt representative institutions in imitation of the practice followed in Mysore and Travancore.

Sec. 26. Local Self-Government.

With a view to foster the political training of the people and at the same to shift a part of the burden of government on them

The organisation of various units of local Self-Government. the Government of India has introduced a system of local government over the whole of India. The type of administrative units is not the same everywhere but principle of government is identical. In Bengal they are District Boards, Local Boards, Union Boards, and Choukidari Unions. In Madras we find organi-

sations like the Panchayats, the Taluk Boards and District Boards. In Bombay there are the District and the Taluk Boards. The District Board is the most important of all self-governing bodies having under its control the whole of an administrative district. It consists of elected members. It has been given certain statutory powers of taxation and is responsible for the maintenance of roads, bridges, dispensaries and primary schools. The District Board derives its revenue from the road cess, tolls and other taxes. The revenue thus raised is supplemented by grants-in-aid which cover at least 25 per cent of the income. The Boards have been given some amount of autonomy but still there is much official control.

The Local
Boards and
the Union
Boards.

The Local Boards are similar in organisations and continue their existence to perform the functions delegated to them by the District Board.

The Union Boards are the Primary Units of Local Self-government. They consist of elected members who in their turn elect the President. The franchise has been extended so as to include adult male residents paying six annas as union rate or having necessary educational qualifications.

The jurisdictions and functions of Union Boards include the following :—(a) the keeping of the village peace through choukidars, (b) maintenance of village roads and bridges, (c) Primary schools and dispensaries, (d) promotion of village sanitation, (e) administration of justice through Union Courts. The revenue of the Union Board is derived from Union rates, grants from the Government, receipts from Union Benches and Courts.

Another type of self-governing organisation is to be found in the Municipalities which are created in towns when the provincial governments think that the creation of such Municipalities will be beneficial to the people. The Commissioners are elected by the rate-payers. Chairman and Vice-Chairman are usually elected by the Commissioners. These organisations are in charge of the maintenance of roads, hospitals, dispensaries and primary schools and have to deal with local sanitation, water-supply and lighting.

The Municipalities have wider powers of taxation. The chief types of taxes include taxes on houses, trades and professions as well as tolls on roads. The provincial governments favour them with certain grants for education and medical purposes. They can also borrow money on the security of their rates and property. The Local Government exercises rigid control over the

Municipality
and its
organisation.

Powers of
taxation.

affairs of the municipalities and may even suspend a municipality for the abuse of power.

In Presidency towns of Calcutta, Bombay and Madras we find Corporations with a large proportion of elected members. These Corporations enjoy considerable autonomy and have large resources. The head of the Corporation is the Chairman or the Mayor who is elected by the Councillors. The administration is carried on through committees constituted for specific purposes.

These Committees are assisted by a permanent staff. The Local Government exercises some control over the Municipal affairs and the appointment of the Chief Executive Officer requires its approval.

Corporations have various functions to perform. They have been found to run free primary schools and charitable dispensaries and take keen interest for the construction and upkeep of municipal roads. They regulate the construction of buildings and compel the abolition of buildings which do not conform to the municipal rules. They prevent adulteration of foodstuff and provide for adequate drinking water and sanitary drainage. The principal sources of income are consolidated rates and taxes on trades and professions.

Improvement Trusts.

The problem of housing in big Presidency towns is an intricate problem that deserves earlier solution. Improvement Trusts have been created and have been functioning for extending the municipal area with a view to removing congestions in the city. The Board of Trustees is constituted with a nominated Chairman.

Port Commissioners.

In major ports of Calcutta, Bombay, Madras, Rangoon, Karachi and Chittagong there are statutory bodies of Port Commissioners elected by Chambers of Commerce, Trades Associations, Corporations and other important bodies. The Chairman is appointed by the Government on the recommendation of the Commissioners. Their functions relate to effective administration of the ports under their charge.

Sec. 27. Amendment of the Constitution: Is there any scope for automatic development ?

Like the Government of India Act, 1919 the Act of 1935 cannot be amended except by the authorities that rule India viz., His Majesty-in-Council and British Parliament. Any amendment authorised by the Second Schedule of the Government of India Act, 1935 and affecting the position of a Federal State when Federation has been established may be made by the British

Parliament, but unless the amendment is accepted by the Ruler in Supplementary Instrument it shall not be construed as-extending the functions exercisable by His Majesty or the Federal authority in relation to the State.

Section 308 of the Government of India Act, 1935 provides that in regard to matters relating to the size or composition of the chambers of the Federal Legislature when established or of the Provincial Legislature or the qualification or the method of choosing the members or to the substitution of a higher educational standard for women or to the qualification entitling persons to be registered as voters any Legislative Chamber may, on motion proposed in the Legislative Chamber by a minister on behalf of the Council of Ministers, pass a resolution recommending any amendment of any provision of Act or of an Order-in-Council. If the said resolution is followed by an address presented to the Governor-General or the Governor as the case may be, requesting His Majesty to communicate the resolution to Parliament the Secretary of State shall, within six months after the resolution is so communicated, cause to be laid before both Houses of Parliament a statement of any action which it may be proposed to take thereon together with the statement and report submitted by the Governor-General or the Governor concerned in regard to the said resolution. In the absence of any such address the Secretary of State shall, before any draft of an order which it is proposed to submit to His Majesty is laid before Parliament, take steps for ascertaining the views of the Government concerned in regard to the proposed amendment except when the amendment proposed is of a minor or drafting nature.

From what has been said above it is clear that the Indian constitution does not contain provisions for automatic development. The people of India and the Indian Legislature have no authority to amend the constitution in order to meet emergent situation. They have to wait till the British Parliament comes forward to effect necessary changes in the constitution. Such being the case there is little scope for automatic expansion. The Governor-General and the Provincial Governors may however refrain from exercising their discretion and individual judgment in many matters and thus help the growth of conventions which will be scrupulously observed by their successors in office. In this way alone the constitution of India may develop without the intervention of the Parliament.

Under the Indian Independence Act of 1947 India enjoys the right to set up a Constituent Assembly with a view to amending the constitution in any way it likes. The Constituent Assembly

has been formed and this Assembly is now framing the constitution of India.

Questions and Answers

Q. 1. Examine the position and powers of ministers in an Indian province under the existing constitution of the country.
(C. U. 1938).

Ans. See Sec. 11.

Q. 2. Discuss the relation of the Governor-General-in-Council with the Secretary of State for India. (C. U. 1933).

Ans. See Sec. 5.

Q. 3. Describe the structure of the Provincial Executive in a Governor's province in India with special reference to the position of the Governor therein.
(C. U. 1935).

Ans. See Sec. 10.

Q. 4. To what extent is the legislative control over the expenditure of the Central Government effective in India?
(C. U. 1935).

Ans. See Sec. 8.

Q. 5. Examine the position and powers of the Secretary of State-in-Council in relation to administration of India. (C. U. 1936).

Ans. See Sec. 5.

Q. 6. Compare the constitution and functions of the Legislative Assembly of India with those of the Council of State,
(Dacca, 1935).

Ans. See Sec. 1.

Q. 7. Discuss the nature and extent of the Legislative powers of the Governor-General as provided for by Government of India Act, 1935.
(C. U. 1943, 1945).

Ans. See Sec. 1.

Q. 8. Discuss the position of a minister in an Indian province in relation to Governor of the province and the Provincial Legislature.
(C. U. 1945).

Ans. See Sec. 11.

Q. 9. State carefully the process of amendment of the Indian Constitution as provided in the Act of 1935. (Agra, 1943).

Ans. See Sec. 27.

Q. 10. What is Provincial autonomy? Indicate the nature and extent of the financial powers of the Provincial Governments in India under the Government of India Act, 1935 (C. U. 1948).

Ans. See Sec. 15.

CHAPTER XXVI

RECENT DEVELOPMENT IN INDIA'S CONSTITUTIONAL POSITION

Sec. 1. Cripps's Proposals.

In response to the persistent demand for independence by the Leaders of India the British Government had to send Sir Stafford Cripps, a member of the then British War Cabinet. He carried in his sleeves the Cabinet's proposal which set forth with precision the practical steps which His Majesty's Government desired to take in fulfilment of their part of promises of self-government to the people of India.

Sir Stafford Cripps disclosed the draft proposals on the 30th March, 1942. This draft proposals provided for—

(i) The creation of a New Indian Union—a Dominion associated with the United Kingdom and other Dominions by a common allegiance to the Crown but equal to them in every respect, in no way subordinate in any respect to domestic and external affairs.

(ii) The setting up after the termination of war an elected body with power to frame a New Constitution for India.

(iii) The signing of a treaty which would have to be negotiated between His Majesty's Government and the Constitution-making body and which would contain important matters relating to complete transfer of responsibility from the British to the Indian hands.

(iv) The retaining of complete control and direction of the defence of India till the framing of the New constitution.

These proposals were rejected by the Congress for the following reasons:—

(a) They did not bring immediate Freedom of India.

(b) They were vague and uncertain and would surely imperil the development of a Free and United nation.

(c) The proposed Constitution of the Constitution-making body was vitiated by the introduction of non-representative elements of the Indian States.

(d) The remote assurance of Independence was clouded by so many qualifications and restrictions as to make real freedom nothing more than an illusion.

(e) To take away defence from the sphere of Indian responsibility would be to reduce the responsibility to a farce and

a nullity and to deny the Government of India of any right to act as a free and independent Government during the pendency of the war.

The proposals thus failed to command support from the patriots of India. The next important event in the Constitutional history of India is the plan submitted by the Cabinet Commission for constitutional reforms.

Sec. 2. Cabinet Mission's Plan.

The Mission came to India with the noble mission of using their utmost endeavours to help India in the attainment of her freedom as steadily and fully as possible. They were assisted in their work by the Viceroy and tried their utmost to assist the two main political parties to reach an agreement upon the fundamental issues of the Unity or Divisions of India. When this attempt failed they submitted their proposals on 16th May, 1946 for ensuring a speedy setting up of the New Constitution. The first problem in this connection was to provide for the setting up of a Constituent Assembly. The Cabinet Mission laid down the following scheme for the formation of the Constituent Assembly :—The Constituent Assembly will consist of representatives elected from among the members of the Provincial legislative bodies. The number of seats to be allotted to a particular province will be proportional to its population, roughly one seat to a million. These seats, again, will be distributed among the main communities in proportion to their strength. To safeguard the interest of minorities provision has been made for setting up of an Advisory Committee in which all minorities will be represented.

The provinces have been grouped under A, B and C. Group A which contains Madras, Bombay, U. P., Bihar, C. P. and Orissa will send 167 General representatives and 20 Muslim representatives. Group B which comprises Punjab, N. W.F. P. and Sind will send 9 General, 22 Muslim and 4 Sikh representatives, and Group C which comprises Bengal and Assam will send 34 General and 36 Muslim representatives. To this total of 292 must be added one each for Delhi, Ajmeer-Merwara, Coorg and British Beluchistan. The Native States will send 93 representatives. This Assembly of 389 members will meet at New Delhi to elect a Chairman and other officers and to set up an Advisory Committee mentioned above. They will then deliberate and frame the Constitution of New India. They will have sovereign power to shape the constitution subject to two limitations, namely, (i) a satisfactory arrangement has been made regarding the minorities and (ii) a treaty agreeable to both parties has been signed.

The Future Constitution according to this plan will be framed

on the basis of a Union of India consisting of both British India and the Native States. There will be a Union Government which will administer the following three subjects—Defence, Foreign Affairs and Communication. It will have sources of revenue as specified by the Constituent Assembly. The said Constituent Assembly may be entrusted with other subjects if the majority of the members of both the communities so desired. All subjects other than the Union subjects will devolve upon the provinces for administration. The Indian States will administer subjects and exercise powers other than those ceded to the Union.

The provinces again will not work in isolation. They will be free to form groups and each group will determine the Provincial subjects to be administered in common. The plan also contains the procedure which should be adopted in framing the constitution. First, all the representatives of the Constituent Assembly will meet at New Delhi to elect a Chairman and determine the rules of business. When this has been done, an Advisory Committee consisting of full representatives of the interests affected should be formed. This Committee will be asked to report to the Constituent Assembly on the fundamental rights, protection of minorities and the administration of tribal and excluded areas. After this has been done, the members shall divide and sit in three sections already stated. Each section shall then settle the constitutions of the provinces and of the groups (if it is so agreed). The members will then sit united to draw up the Union Constitution in co-operation with the representatives of the States. Without affecting the general framework as enunciated above, the Constituent Assembly will be competent to draw up any Constitution for the Union. Any change in the general framework may, however, be made if the majority of the members of the major communities so desire. No major communal issues can be decided except with the approval of the majorities of both the communities. The Constituent Assembly may, if it so desires, decide to go out of the British Commonwealth of Nations but in that case it will have to negotiate a treaty with the British Government in order to provide for certain matters arising out of the transfer of power. This is the only clog on the sovereign power of the Constituent Assembly.

The proposed constitution shall contain provisions for amendment so that any province may call for reconsideration of the constitution at the end of every ten years.

The plan was accepted by the Congress and the Muslim League, but the latter subsequently withdrew its acceptance as it could not agree with the Congress in the interpretation of the provision regarding Grouping.

The plan rejected the demand of the Moslem League for a Sovereign State of Pakistan and the consequent division of India.

Sec. 3. Mountbatten plan of June 3, 1947.

The Cabinet Mission's plan could not bring a Sovereign State of Pakistan. The Moslem League accepted the plan but when it understood the true implications of the provisions regarding grouping it withdrew its acceptance. The Moslem League, therefore, refused to attend the Constituent Assembly which met at New Delhi. The difference between the League and the Congress could not be reconciled and the political atmosphere remained cloudy when on February 20, 1947 the British Cabinet announced its intention to quit India by June, 1948. The Herculean task of composing the difference fell upon the New Viceroy, Lord Louis Mountbatten who after negotiations with the Leaders of the Congress and the League succeeded in arriving at an agreed plan for drawing up the Future Constitution of India.

According to this plan, the Congress accepted the demand of the League for the division of India, provided the Legislatures of Bengal, the Punjab and Sind decided by a single majority not to join the Indian Constituent Assembly and provided also the members of the non-Muslim majority districts of Bengal and the Punjab are allowed to decide by a simple majority the question of joining the existing Constituent Assembly. These two conditions led to the partition of Bengal and the Punjab and the creation of two sovereign states—The Indian Union and the Pakistan. Again, once the partition of Punjab has been decided upon, a Referendum will be held in N. W. F. P. to decide whether that province will join the Indian Union or the Pakistan. In Beluchistan too, opinion of the people will be consulted on the same point. If the Moslem majority districts of Bengal decide to join the Pakistan, a referendum will be held in Sylhet to determine whether that district of Assam will join East Bengal or remain united with Assam.

If the decision is in favour of partition two Boundary Commissions will be set up to determine the contiguous Muslim majority areas in the Punjab and Bengal and in the Sylhet and Cachar districts of Assam.

Pakistan will thus consist of N. W. F. P., Sind, Beluchistan, the muslim majority areas in the Punjab, Bengal and Sylhet and Cachar districts of Assam. The Indian Union will consist of the remaining portion of India. Both these Divisions will enjoy Dominion Status on and from the middle of August, 1947 and the British Government will be withdrawn from that date. The Constitution of these two Dominions will be drawn by two separate Constituent Assemblies sitting at Delhi and Karachi respectively.

Each will be free to decide whether to remain within the British Commonwealth or not.

Sec. 4. Independence Act of 1947.

The independence of India cannot be a reality unless it is confirmed by the British Parliament by necessary enactment. Hence a Bill containing the Mountbatten plan enumerated above was hurried through the British Parliament and was passed into law.

This Act purports to set up two Dominions in India viz., the Indian Union and the Pakistan.

The Pakistan will contain Sind, Beluchistan, N. W. F. P., Muslim majority areas in the Punjab, Bengal and in the Sylhet and Cachar districts of Assam. The rest of India shall form part of the Indian Union.

Each Dominion shall have a Governor-General appointed by the King on the advice of the Dominion Cabinet concerned. The Act empowers the Constituent Assembly of each Dominion to frame its own constitution; pending the framing of such constitution, the Governments of the Centre as well as of the provinces will be carried on according to the provisions of the Government of India Act, 1935 with necessary modification made by the Governor-General. The Governor-General and the provincial Governors will have no special powers during this period of transition and will serve as Constitutional Rulers on the advice of their cabinets. The Constituent Assembly will act as the Central Legislature during the interim period and exercise powers under the provisions of the Government of India Act, 1935.

The Act authorises the Dominion Legislature to exercise sovereign power in the matter of legislation and to repeal freely all acts of the British Parliament as applied to the Dominion and no act of the British Parliament will apply to the Dominion after the 15th August, 1947. The Dominion Legislature will enjoy extra-territorial powers. The King of England will lose his title—the Emperor of India and the office of the Secretary of State for India and of his advisory body will cease.

As regards the Native States the paramountcy of the British Crown over the States will lapse and for that reason all treaties and sanads will become inoperative. The States concerned will be free to join either of the Dominions.

The Act also contains some provisions regarding the armed forces and their services.

Sec. 5. The Boundary Commission's Report.

The two boundary commissions, namely, the Punjab Boundary Commission and the Bengal Boundary Commission constituted by

the announcement of the Governor-General on 30th June, 1947 had a common chairman Sir Cyril Radcliffe. These commissions submitted their award on the following lines. According to the award of the Punjab Boundary Commission, the Province of West Punjab will include the whole of Multan and Rowalpindi Divisions and the Districts of Gujranwala, Sheikhupura and Sialkot of Lahore Division ; The Province of the East Punjab will include the whole of Jullundhar and Ambala Divisions and the Amritsar of Lahore Division. Gurdaspur and Lahore Districts of Lahore Division have been divided between the two new provinces.

Under the award of the Bengal Boundary Commission the following distributions have taken place. The whole of the Chittagong and Dacca Divisions have been assigned to the East Bengal while Burdwan Division has been assigned to the West Bengal. The Rangpur, Bogra, Rajshahi and Pabna Districts of the Rajshahi Division and the Khulna District of the Presidency Division fall within East Bengal and the Districts of Calcutta, the 24 Parganas, Murshidabad of the Presidency Division and the Darjeeling Districts of the Rajshahi Division have been included in West Bengal. The five districts of Nadia, Jessore, Dinajpur, Jalpaiguri and Maldah have been divided between the two provinces. The whole of the district of Sylhet has been transferred from the Province of Assam to the new Province of East Bengal.

Sec. 6. Indo-Pakistan Agreements.

The creation of two independent Dominions has necessitated re-adjustment of certain vital matters by means of agreement. By agreements of July 11, 14, 15 and August 12, the Partition Council divided the Armed forces and allotted the shares of each Dominion.

By agreement of July, 30, the army, navy and air force commanders were appointed in both the dominions. As to stores it was agreed that one-third of the stocks would be assigned to Pakistan. The rest of the stores along with the ordnance factories fell to the share of the Indian Union. The cash balances of the undivided Government of India were also distributed. The Pakistan's share was by agreement fixed at Rs. 75 crores.

Sec. 7. India's Draft Constitution.

The Indian Union has already published the Draft constitution. We are now concerned with the important provisions of this draft constitution which at once indicates the type of constitution which Independent India is going to have in near future.

This constitution is associated with a Preamble which proves in clear terms that the people of India have resolved to cons-

stitute India into a sovereign Democratic Republic and to secure to all citizens justice, liberty, equality and fraternity."

(i) **Union: its territory and jurisdiction:**—The Indian Union shall be a union of states which shall include Madras, Bombay, West Bengal, United Province, Bihar, East Punjab, Central Province and Berar, Assam, Orissa, Delhi, Ajmeer-Merwar, Coorg, the following Indian States:—Mysore, Kashmir, Gwalior, Baroda, Travancore, Cochin, Udaypur, Jaipur, Jodhpur, Bikaner, Alwar, Kotah, Indore, Bhopal, Rewa, Kolapur, Patiala, Mayurbhunj, United States of Kathiawar and other Indian States already included within the Dominion of India before the commencement of the constitution.

The territory of the Dominion will include the territories mentioned above, the Andaman and Nicobar Islands and other territories which may be acquired. The Union shall have jurisdiction to increase or decrease the area of any State comprised therein and to alter its boundaries and names.

(ii) **Citizenship:**—The Union will have a wider conception of citizenship so as to treat as a citizen (a) every person who or either of whose parents or grand-parents was born in the territory of India and who has not made his permanent abode in any foreign country after the first day of April, 1947; (b) every person who or either of whose parents or grand-parents was born in India as defined by the Government of India Act, 1935 or in Burma, Ceylon or Malaya and who has a domicile in the territory of India as defined by this constitution provided that he has not acquired the citizenship of any foreign state before the commencement of the constitution.

(iii) **Fundamental Rights:**—The Constitution makes a declaration of certain fundamental rights. These include (a) rights to equality, (b) rights to religion, (c) cultural and educational rights and rights to property. In guaranteeing these rights the Draft Constitution draws a distinction between citizens and non-citizens. The citizens alone are entitled to equality of opportunity in matter of public appointment, freedom of speech and association, freedom to acquire property, freedom in regard to business, trade or occupation. The citizens are also entitled to adequate means of livelihood and can legitimately demand an equitable distribution of national wealth and an equal pay for equal work. There will be no discrimination between one citizen and another on the ground of religion, race, caste or sex.

There are certain other rights which are available to all; these include protection against *ex post facto* legislation, protection of life and personal liberty, protection of slavery and of employment

of children in mines and factories, freedom of conscience and the right to profess and practise any religion.

The above rights can be enforced in case of infringement by instituting appropriate proceeding in the Supreme Court.

(iv) **Union Executive:**—The executive power of the Union shall be vested in the President of India who shall be elected by the members of an electoral college consisting of members of both Houses of Parliament and the elected members of the State legislatures.

The President shall hold office for a term of five years from the date of his joining the office. He shall be eligible for re-election only once.

There shall be a Vice-President of India who shall be elected by the members of both Houses of Parliament at a joint meeting according to the system of proportional representation by means of the single transferable vote and shall hold office for five years. The Vice-President shall be the Ex-officio Chairman of the Council of State.

(v) **Emergency Powers of the President:**—Whenever any grave emergency will arise which will threaten the security of India by war or domestic violence, the President will be entitled to make a declaration to that effect and to extend his executive power to the giving of direction to any State. Such proclamation shall be laid before each House of Parliament and shall cease to operate at the expiration of six months unless before such expiration it has been approved by both Houses of Parliament. The President may also assume administrative charge over a State in which the constitutional machinery has failed.

(vi) **Legislative powers of the President:**—The legislative power of the President consists in promulgating ordinance during the recess of the Parliament if occasion arises for taking immediate action. Such ordinance shall have the force and effect of an Act and shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of the Parliament or if before the expiration of that period the Houses disapproved the ordinance by resolutions, upon the passing of the second of the resolutions. The President has the option of withdrawing the ordinance at any time.

(vii) **Privileges of the President:**—The President shall have an official residence and shall be paid such emoluments and allowances as may be determined by Parliament by law and until such provision is made such emoluments and allowances as are specified in the second schedule. This schedule fixes the emoluments per mensem at Rs. 5500.

When the President is to be impeached for violation of the Constitution, the charge is to be framed by resolution in either House moved after notice in writing signed by not less than thirty members of the House and such resolution has been supported by not less than two-thirds of the total membership of the House.

(viii) **Council of Ministers:**—The constitution provides for a Council of Ministers with the Prime Minister at the helm to aid and advise the President. The Prime Minister shall be appointed by the President and other ministers shall be appointed by the President on the advice of the Prime minister. These ministers shall hold office during the pleasure of the President. A minister who for a period of six consecutive months is not a member of either of the Houses of Parliament shall, at the expiration of that period, cease to be a minister.

The Council shall be collectively responsible to the House of the People.

(ix) **Attorney-General and Auditor-General for India:**—An Attorney-General for India shall be appointed by the President. He shall be under obligation to tender advice to the Government of India upon legal matters and to perform other duties imposed upon him. There shall also be an Auditor-General appointed by the President. He shall perform duties relating to accounts of the Government of India or of Government of any State.

(x) **Parliament for the Union:**—The Parliament shall consist of the President and two Houses to be known as the Council of States and the House of the People. Council of States shall consist of 250 members of whom 15 are to be nominated by the President and the remainder shall be the representatives of the States.

The House of People shall consist of not more than five hundred representatives of the people of the territories directly chosen by the Voters.

The Vice-President of India shall be ex-officio Chairman of the Council of States.

The Council of States shall not be subject to dissolution but as nearly as possible one-third of the members shall retire as soon as may be on the expiration of every second year.

The House of People unless sooner dissolved shall continue for five years.

The House of People shall choose two members of the House as Speaker and Deputy-speaker respectively.

A Money Bill shall not be introduced in the Council of States.

In Parliament the business shall be transacted in Hindi or in English.

(xi) **Federal Judicature:**—There shall be a Supreme Court of India with a Chief Justice of India and other judges not being less than seven. They shall hold office until they attain the age of sixty-five years.

The Supreme Court will have both original and appellate Jurisdictions.

(xii) **Government of States:**—Each State shall have a Governor in whom the executive power of the State shall be vested. The Governor shall be elected by a direct vote of all persons who have right to vote at the General Election for the Legislative Assembly of the State. Alternatively he shall be appointed by the President from a panel of four candidates to be elected by the members of the Legislative Assembly of the State or where there is a Legislative Council, to be elected jointly.

He shall hold office for a term of five years and can be re-elected only once.

The Legislative power of Governor consists in promulgating ordinance during the recess of the Legislative Assembly or Council of States when in his opinion necessity has arisen for taking immediate action. This ordinance shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature unless sooner disapproved by resolution passed by the Legislature.

The Governor of a State may in case of grave emergency issue proclamation and exercise his functions in his discretion after suspending in whole or part the operation of constitutional provision; such proclamation if not revoked earlier shall cease to operate at the expiration of two weeks.

There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor.

The Ministers shall be appointed by the Governor and shall hold office during his pleasure. A minister who for a period of six consecutive months is not a member of the Legislature of the State shall cease to be a minister.

The Governor of each State shall appoint an Advocate-General to give advice upon legal matters and to perform duties of a legal character.

(xiii) **State Legislature:**—Each State shall have Legislature consisting of the Governor and two Houses or one House as the case may be. When the State Legislature consists of two houses they shall be known as the Legislative Assembly and the Legis-

lative Council. When there is one House it will be known as the Legislative Assembly.

The Legislative Assembly shall be composed of members chosen by direct election. The total numbers shall not be more than 300 or less than 60. The members of the Legislative Council shall not exceed 25 per cent of the total members of the Legislative Assembly. One-half of these members shall be chosen from panels of candidates constituted under clause (3) of Sec. 150. One-third shall be elected by the members of the Legislative Assembly. The remainder shall be nominated by the Governor.

The election shall be on the basis of adult suffrage.

Money Bills shall not be introduced in the Legislative Council.

(xiv) **Constitution of some States:**—The States of Delhi, Ajmeer-Merwar shall be administered by the President through a Chief Commissioner or Lieutenant to be appointed by him or through the Governor or ruler of a neighbouring State.

The territory of Andaman and Nicobar islands shall be administered by the President acting through a Chief Commissioner.

(xv) **Minorities:**—Seats shall be reserved in the House of People:—(a) for Muslim community and Scheduled castes, (b) Scheduled tribes, (c) Indian Christian Community in Madras and Bombay. (d) The President may nominate not more than two members to represent the Anglo-Indian Community if the latter is not adequately represented.

Similar protection for minorities is to be found in the constitution of Legislative Assembly of Madras and Bombay.

Seats are also reserved for autonomous districts in the Legislative Assembly of Assam. Claims of minorities are to be taken into consideration in the matter of appointments and posting in the Union and also in the States.

Special reservation is made in respect of educational grants for the benefit of Anglo-Indian Community upto 10 years.

(xvi) **Services:**—There shall be a Public Service Commission for the Union and a Public Service Commission for each State or one Public Service Commission for two or more States for conducting examination, for appointments to the services, and for assisting the States in the recruitment of services.

(xvii) **Amendment of the Constitution:**—An amendment in the constitution may be initiated by a Bill in either House of Parliament and then passed by each House by a majority of not less than two-thirds of the members. It shall then be presented

to the President for his assent and upon such assent being given the constitution shall stand amended.

	Rs.
(xviii) Salary :— President ..	5,500
Governor of a State ..	4,500
Chief Justice of Supreme Court ..	5,500
Any other judge of Supreme Court ..	4,500
Chief Justice of a High Court ..	4,000
Other Judges of the High Court ..	3,500

CHAPTER XXVII

THE GOVERNMENT OF PAKISTAN

Sec. 1. The principles of Government.

The establishment of Pakistan which means the land of the pure has been the aspiration of the Muslims of India since that idea came out of the mouth of Sir Mahammad Iqbal while delivering presidential address to the Muslim League in 1930. The said Muslim League emphasized the necessity of such Pakistan for the cultural progress of the Muslim population of India. This demand was persistent throughout the long period during which the League remained under the able leadership of Mr. Jinnah. The Congress ultimately accepted this demand of the Muslim League on condition that the Hindu Majority areas in Bengal and the Punjab were separated and allowed to join with India. After such agreement was arrived at the Indian Independence Act was passed. This Act authorised the establishment of Pakistan as an independent Dominion. This Dominion of Pakistan was established on the 15th August, 1947.

Pakistan as constituted under the Indian Independence Act, comprises certain territories of India which fall under two zones. The Eastern Zone includes East Bengal and the Sylhet District of Assam while the Western zone comprises West Punjab, Sind, North-West Frontier Province and Beluchistan. The Indian Independence Act of 1947 which liberated the Native States from the Paramountcy of the British Crown gave them the option of joining one or other of the two Dominions. Accordingly Kalat and Bhawalpur, Khairpur, Las Bela, Chitral, Svat State, Dir, Kharan and Makran have acceded to the Dominion of Pakistan.

Pakistan has been given by the aforesaid Act right to frame its own constitution without any interference from the British Parliament. The Constituent Assembly has been set up for the purpose. The said Assembly has formulated the principles of Government on the preachings of Islam. These principles as accepted by the Constituent Assembly include those of democracy, freedom, equality, tolerance and justice. Until the Constitution of Pakistan is framed the provisions of the Government of India Act, 1935 as amended by the Constituent Assembly and the Governor-General of Pakistan will continue to regulate the administrative machinery. The said Governor-General has been authorised by the Indian Independence Act to amend and modify the provisions of the Government of India Act, 1935. Again the Constituent Assembly has amended the Indian Independence Act with a view to extending the power of the Governor-General.

Sec. 2. The Central Executive.

This Central Executive is composed of the Governor-General and the Council of Ministers.

The Governor General owes his formal appointment to the King of England who is guided in this respect by the instructions received from the Dominion Cabinet. He is the executive head of the Federation and exercises his function as a constitutional head strictly in accordance with the advice of the Cabinet which is the real executive of the Federation. All important appointments including those of the Ministers, Advocate-General, the provincial Governors, the Judges of the Federal Court as well as as the High Courts are in his hands. He is not amenable to the jurisdiction of any court for the discharge of his functions and enjoys the prerogative of granting pardon.

He bears an intimate relation with the Legislature. He can summon or prorogue the Federal Legislature and send messages to the same. Certain bills which purport to affect the provincial interests, currency, coinage, State Bank, appellate jurisdiction of the Federal Court, cannot be introduced without his previous sanction. Similar sanction is needed for the introduction of any Bill which purports to confer additional powers to the Federal Public Service Commission or transfer lands to public ownership.

No Bill can be passed without his consent. He may send back a bill for reconsideration by the Legislature. He can promulgate ordinance which remains valid for an indefinite term. Such ordinance may even authorise expenditure. No demand for grants can be made without his recommendation.

The Provincial Governors are to administer the provinces strictly in accordance with his direction. He may even issue a proclamation of breakdown of the provincial administration in his own hand. He may also issue a proclamation of Emergency when in his opinion the security of Pakistan is threatened by war or internal disturbance. During such proclamation he also assumes charge over the provincial administration. He can create new provinces. He can amend the Act which regulates the administration of Beluchistan and regulate the administration of this area.

Sec. 3. The Council of Ministers.

The Ministers who are appointed by the Governor-General hold office during his pleasure. They form a Council and formulate the policy of administration. They occupy a unique position in the sphere of administration and instruct His Majesty on the appointment of their constitutional master. The Governor-General acts merely as a constitutional ruler on the advice of the Council of Ministers.

These ministers are ordinarily selected from among the members of the Legislature. If a minister when appointed is not a member of the Legislature, he must secure a seat within 10 months or vacate his office.

The Council of Ministers is held responsible to the Legislature and must resign when a vote of no-confidence is passed against them. Each particular minister is placed in charge of certain departments of administration and has to answer questions asked in the Legislature touching those departments. They can attend the meetings of the Legislature and can vote only when they are members.

Sec. 4. The Central Legislature.

The Constituent Assembly of Pakistan now represents the Central Legislature. It consists of 67 members of whom 44 members represent Eastern Bengal, 17 members represent West Punjab, 3 members represent Sind, 2 members represent N. W. F. P. and one member represents Beluchistan.

All these members are elected by the Lower House of the Provincial Legislatures. The Eastern Bengal has among its representatives 13 non-Muslim representatives. This Constituent Assembly has an elected President. The Ministers and the Advocate-General can attend the sittings of the Legislatures. The Governor-General can summon or prorogue the Legislature but he must summon the Legislature at least once a year.

The power of the Dominion Legislature has been defined by the Government of India Act, 1935 as amended by Pakistan (Provisional Constitutional) Orders, 1947. It can legislate on matters included in the Federal and concurrent lists. It can legislate on Provincial subjects during the Proclamation of Emergency and in normal times with the consent of the Provinces concerned. Certain bills touching the State Bank, currency, coinage, appellate jurisdiction of Federal Court and the additional power of the Federal Public Service Commission cannot be introduced in the Central Legislature without the previous permission of the Governor-General. Every Act requires the assent of the Governor-General who may veto a bill or send it back for reconsideration.

The budget of the Central Government has to be placed before the Legislature. Certain items of expenditure such as the salary and allowances of the Governor-General, of the Ministers, Advocate-General, Judge of the Federal Court and Debt charges are charged upon the revenues of the Federation and are non-votable. Other items are votable items.

The Ministers hold their office so long as they can command the confidence of the Legislature.

The Legislative procedure remains unchanged. Every bill must pass through three readings. There is provision for sending a bill to a Select Committee for examination and report before the bill enters the stage of third reading when no amendment can be made.

When the bill has been passed by the Legislature the Governor-General may either assent to the bill in the name of His Majesty or withhold his assent from the bill. He may also send a bill for reconsideration.

Money Bills can only be introduced by a Government member under the authority of the Governor-General. Again a demand for grant can be proposed by a Government member on the recommendation of the Governor-General. When the voting of the demand for grant is over the Governor-General authenticates the schedule of expenditure approved by the Legislature.

Sec. 5. The Provincial Government.

The Dominion of Pakistan consists of 4 Governors' Provinces viz. Eastern Bengal, Western Punjab, Sind and North Western Frontier Province. New provinces can be created by the Governor-General who has also been empowered to define the boundaries of the existing Provinces.

Governor.

The Chief executive head of each Province is the Provincial

Governor who is appointed by the Governor-General and holds office for a term of 5 years.

He is the Constitutional Figure head and has to act on the advice of ministers who are held responsible to the Legislature. He makes all important appointments including those of the Ministers, Advocate-General, members of the Provincial Public Service Commission. He is entitled to make rules for the transaction of business of provincial Government. He can make regulations for the peaceful administration of excluded and partially excluded areas with the approval of the Governor-General.

He plays an important part in the legislature which is summoned and prorogued by him. He may dissolve the Lower House. Certain bills touching transfer of land to Public ownership, additional power of the Public Service Commission, and the revenue jurisdiction of the High Courts cannot be introduced without the previous sanction of the Governor. No bill can become an Act without the consent of the Governor who may withhold such consent, reserve the bill for the consideration of the Governor-General or send it back for reconsideration of the Legislature. He can send messages or address to the Legislature. He can promulgate ordinances when the Legislature is not in Session. Such ordinances shall be placed before the Legislature when it meets and shall become inoperative at the expiration of six weeks. No demand for grant can be made and no Finance bill can be introduced without his recommendation.

He may issue proclamation under Sec. 93A and may assume charge of the Provincial Administration save and except the functions of the High Court.

He can appoint and dismiss the Ministers but in doing so he must follow the direction of the Governor-General.

Council of Ministers.

The real executive of a Province is the Council of Ministers. These Ministers are appointed by the Governor and hold office during his pleasure so long as they can command the confidence of the Legislature. The Leader of the Party in power in the Legislature is asked by the Governor to form the Ministry and all Ministers are formally appointed on his advice. Every minister must be a member of the Legislature. If he is not a member of the Legislature when he is appointed he must procure a seat in the Legislature within 10 months or resign.

Provincial Legislature.

The Legislature of every province is unicameral in structure. The Governor of the Province represents His Majesty in the Legis-

lature. The number of seats in the Legislature varies from one Province to another. In Eastern Bengal there are 171 seats. The members are elected by the voters who are registered in separate communal electorate. The Legislative Assembly has a normal life of five years unless sooner dissolved by the Governor. The said Governor can summon or prorogue the Legislature. The Ministers and Advocate-General can attend the sittings of the Legislature.

The Legislative power extends to subjects included in the provincial and the concurrent lists. These Laws cannot contravene Federal laws unless assented to by the Governor-General. The Legislature has complete control over the provincial finance. The Provincial budget must be submitted to it for necessary discussion and approval. The expenditures charged on the revenue of the Province cannot be voted upon but other items can be voted upon. The expenditures charged upon the revenue of the Province include the salaries and allowances of the Governor and his staff, of the ministers and Advocate-General, of the judges of the High Court, expenditures on excluded areas and debt charges. Every member enjoys freedom of speech and similar other rights which were available to the former Legislature.

The Judiciary.

The highest court of appeal in the Dominion is the Judicial Committee of the Privy Council which is competent to hear appeals from the judgment of the Federal Court in any dispute touching the interpretation of the Constitution. It can also hear other appeal with the leave of the Federal Court or of the Privy Council.

Next comes the Federal Court which consists of the Chief Justice of Pakistan and a number of other judges not exceeding six.

The judges are appointed by the Governor-General and can continue in office till they attain the age of sixty five years. They can be removed from office on the ground of misbehaviour or infirmity of body or mind if the Privy Council consents to such removal. The court has both appellate and original jurisdiction. In exercise of its appellate jurisdiction it hears appeals from the judgment of any High Court involving questions of law as to the interpretation of the Constitution. In its original jurisdiction comes the decision of disputes between Federation and the Provinces or States. The Federal Court has got to tender advice on questions referred to it by the Governor-General.

Each province has a High Court consisting of a Chief Justice and a number of judges appointed by the Governor-General.

They hold office till they attain the age of 60 years. They may be removed earlier on the ground of misbehaviour, infirmity of mind or body when the Judicial Committee of the Privy Council consents to such removal.

The High Court hears appeals from the decision of inferior Civil and Criminal Courts. The High Court supervises the affairs of the inferior courts and determines the question of promotion and posting of Subordinate Judicial officers.

In each district we find a Court of the District and Session Judge. These District Judges are appointed by the Governor on the advice of the High Court. These Courts have definite Civil and Criminal jurisdictions."

Below the Districts there are Civil Courts of Subordinate Judges and Munsiffs with definite territorial and pecuniary jurisdiction.

On the Criminal side there are Courts of Magistrates with varying powers.

APPENDIX A

THE GOVERNMENT OF JAPAN

The Government of Japan was, before her defeat in the recent war based upon the report of the Commission which was summoned to examine the constitution of the leading European States and the United States of America. It was influenced greatly by the liberal policy of Prince Ito whose contribution to the constitution of Japan could never be ignored. The constitution came into force on the 11th February, 1889.

The constitution though mainly written came to be associated with many conventions which greatly influenced the working of the Governmental machinery.

The Executive head was the Emperor who was assisted by an Advisory Committee known as the Privy Council. He enjoyed wide powers in legislation and issued ordinances for maintaining peace and order. No law could be passed without his consent. He could convoke and prorogue the Legislature. He could declare war and make treaties with foreign powers. He could appoint and dismiss all officers of the Government. He granted pardons and conferred titles on persons who rendered services to the State. As the Emperor could do no wrong, all these powers were exercised subject to the countersignature of the ministers concerned, who were responsible for the acts of the Emperor.

The Emperor was theoretically absolute monarch enjoying greater power than the British King. He was above law and could not be deposed. He was not bound to follow the advice of ministers of defence. The ministers were constitutionally responsible to him and not to the Legislature.

The advisory committee of the Emperor was the Privy-Council. It was composed of a President, a Vice-President, a Chief-Secretary, 5 Secretaries and 24 Councillors. The ministers of the Cabinet were ex-officio members of the Council.

The Cabinet was an extra-legal body composed of 13 ministers of whom one was the Premier. The ministers were chosen from among the members of the Legislature and had a right to speak in either Chamber. Their responsibility to the Legislature was not quite clear. The Government thus enjoyed considerable freedom. The Cabinet was influenced by the Japanese Army. The Ministers of War and Navy were drawn respectively from Generals and Admirals in active military service. There was Cabinet Advisory Board set up in May, 1935 for the purpose of examining principal national policies.

The Legislature was represented by the Imperial Diet which consisted of two houses, the House of Peers and the House of Representatives. The Diet met every year and its session lasted for three months. Generally the discussion was public but sometimes a secret sitting might be held to meet the exigencies of the State.

The House of Peers was aristocratic in character. It was composed of all members of the Imperial Family above 21 years, all Princes and Marquesses above thirty years and 18 Counts, 66 Viscount and barons elected respectively by the peers of their ranks and several persons who had rendered distinguished services as well as representatives of the highest tax-payers. The number of title-holders must not exceed the number of non-title holders. There were 409 members.

The elected titled members as well as the representatives of the highest tax-payers sat for seven years; others sat for life. The President and the Vice-President of the House were nominated from amongst the members. It enjoyed co-ordinate powers with the Lower House and could even modify and alter the budget which the Lower House had passed. It could not originate money bills.

The House of Representatives was more democratic in organisation. It consisted of 400 representatives elected by male Japanese subjects of not less than twenty-five years of age and paying a direct tax of at least three yen. The members must be at least 30 years old. A general election took place once every four years; election was by secret ballot. Certain persons such as government servants, those engaged in the Army or Navy, teachers and students were ineligible for membership. There were two principal parties—The Seiyukai and the Minseito—in addition to a few proletarian parties. The party policy was controlled by professional interests. Any thirty members could propose an appropriation in the Lower House.

The Judiciary consisted of four different grades of Courts viz., (1) the Local Courts, (2) the District Courts and (3) the Courts of Appeal and (4) the Supreme Court. The jurisdictions of these courts were defined by law. Each court had both civil and criminal jurisdiction. There is a separate court for the trial of offences committed by the executive officer in their official capacity. The judges of the Administrative Court were appointed for life on the recommendation of the Prime Minister while all other judges were appointed on the recommendation of the Ministers of Justice.

The constitution owed its origin to the Emperor and for this reason he alone was competent to initiate amendments. Any pro-

posals for amendments had to be submitted to the Diet which could pass the same by a two-thirds majority.

The Japanese constitution fell on evil days since the annexation of Manchuria in 1931. The Government of the day had practically no control over the Militarist.

Like Germany in Europe, Japan in Asia had the bad fortune of incurring a defeat in the hands of the Allied powers. This capitulation of Japan has meant a deathblow to her national life and killed her aspiration to introduce a new order in Asia. U. S. A. now plays the predominant part in the exercise of control over Japan. Russia is not ready to accept the scheme of Advisory Commission suggested by U. S. A. and insists that commission must be preceded by a control council on the Berlin model. U. S. A. has little faith in such control council because it does not, as experience in Germany tells them, ensure the unanimity rule and obstructs the true implication of Potsdam policy.

U. S. A. still occupies a monopolistic position in the administration of Japan and General MacArthur occupies leading position in the politics of Japan. He has ordered the Japanese Government to transfer all her diplomatic and consular properties everywhere in the world to the allied powers, to cease relations with the foreign governments and to recall her diplomatic and consular representatives from abroad. He has also ordered the dissolution of the big industrial, commercial and financial combines like Zaibatsu which have control over the economic resources of Japan and lay at the root of the former military organisation in Japan.

Japan has got to carry out the Potsdam terms as smoothly as possible. Her military castes have been thoroughly beaten and cowed down. The position of Hirohito, the Emperor of Japan is lost and he had been made to run to the MacArthur's place to know the future of Japan. He wields great responsibility for the faithful execution of Potsdam declaration and has been ultimately made to abdicate.

The present constitution is to be replaced. The new constitution will possibly reduce the prerogatives of the Emperor and transfer more powers to the House of Representatives on the lines followed by Great Britain.

APPENDIX B

THE GOVERNMENT OF CANADA

Canada was a French Colony before it was conquered by the British and brought under British rule by the Treaty of Paris in 1763. Since then it was being governed by the Quebec Act of 1774 and Canada Act of 1791. The latter Act created two distinct provinces viz., the English Province of Upper Canada and the French Province of Lower Canada, which introduced in each bicameral Legislature consisting of an elected Chamber and a nominated Chamber. The Executive was made independent of the Legislature and consisted of European members. The result was popular discontent which culminated in a rebellion. Lord Durham was sent to Canada as Governor and High Commissioner for report after proper enquiries. This famous Durham Report which was published in 1839 recommended a union of Upper and Lower Canada and the grant of a responsible government except in matters which truly affected imperial interest. Immediately after the report, the Act of 1840 brought about the unification of Upper and Lower Canada but responsible government followed after the appointment of Lord Elgin as Governor in 1849. This forced unification could not bring peace in Canada. The French people in Lower Canada could not tolerate the racial ascendancy of the British in the new constitution. Nothing but voluntary federation could save the situation. The Canadians themselves brought out such schemes of federation which was approved by the various legislatures of the provinces of Canada and was finally incorporated in the British North America Act of 1867.

By this Act the Dominion of Canada was founded on the 29th March, 1867. It now consists of nine Provinces viz, (1) New Brunswick, (2) British Columbia, (3) Ontario, (4) Quebec, (5) Nova Scotia, (6) Prince Edward Island, (7) Manitoba, (8) Saskatchewan and (9) Alberta. New Foundland was added as the tenth Province from April, 1949, on the decision of a Plebiscite. There are two more territories known as Yukon and North west territories.

The British North America Act did not at once confer on Canada the status which she now enjoys. It took at least half a century to place Canada in her present position. In 1870 she obtained her right to make her coastwide navigation laws. In 1882 she asserted her right to veto a nomination to the office of the Governor-General. In 1897 she exercised her right to send her

representatives to the Judicial Committee of the Privy Council. In 1907 she asserted her right to make her own immigration laws. In 1907 her right to make commercial treaties was recognised and in 1916 she came to participate in the formulation of foreign policy.

This Dominion comprises an area of about 37 lakh square miles and is inhabited by people who differ in race, religion and language. In spite of this heterogeneity the people of Canada entertain in common a national feeling which has purchased for her an enviable status.

It is one of self-governing colonies of Great Britain. The supreme executive authority is vested in His Majesty the King of England. He is represented in Canada by a Governor-General appointed by the King in consultation with the Dominion Government. He is to take oath of allegiance to the King of England.

He is associated with a Privy Council which is recognised in Law and can aid and advise the Governor-General. This Privy Council is again composed of Cabinet Ministers.

The Governor-General derives his powers from Statutes, Letters Patent and Instructions. He is the Commander of the Armed Force, and can make important appointments including the appointment of Ministers, Lieutenant Governors and the Judges.

The Governor-General and his council constitute the formal or the ornamental executive; the real executive is the Cabinet composed of the Prime Minister and 18 other ministers representing the various religions and races. These ministers are appointed by the Governor-General. The members of the Cabinet are appointed to the Privy Council. The Cabinet is constituted on the British model. The Governor-General sends for the Leader of the party-in-power in the Legislature, makes him Prime Minister and entrusts him with the formation of the Cabinet. He has to accept the recommendation of the Leader in this direction. In choosing his colleagues he does not enjoy complete freedom in as much as he has to see that all important interests as well the different provinces are represented in the Cabinet. This Cabinet is responsible to the Legislature and has to defend its policy when any question arises; the party solidarity in which it is founded enables it to influence Legislature greatly. The Governor-General seldom interferes with the policy of ministers. He can summon, prorogue and dissolve the Parliament but he now does so on the advice of the Ministry.

The Parliament of Canada comprises the King of England and two Houses—the Senate and the House of Commons. The

Senate represents the special interests and the House of Commons represents the mass of population. The Senate is composed of 96 Senators nominated for life by the Governor-General. Provinces are not equally represented therein; the small number adds to efficiency but the nomination is not based upon efficiency or distinction but upon party services. This goes to undermine the position of the Senate. Hence it does not possess the glamour of the aristocratic and hereditary chamber as in Great Britain. The Senators are nominated by the Governor-General and the only qualification that is taken into consideration is the service rendered by the person to the dominant party. Hence the Chamber does not ensure the strength of an elected assembly where personal merit counts much. The Senate again does not represent the provinces equally and does not promote national solidarity. The President of the Senate is nominated by the Governor-General. It seldom disagrees with the Lower House and prevents hasty and ill-considered measures. The House of Commons consists of 245 members elected by the people for five years. Of these members Ontario claims 82 and Quebec 65 members. The Speaker is elected by the House but the Governor-General must confirm the election. The members are given salaries. The Legislative powers of the Dominion are governed by Acts of the Imperial Parliament which prescribes the limits within which the Provincial Parliament must act and invests all residuary powers in the Imperial Parliament which also continues to be the paramount authority in making proposals for the amendment of the constitution. The House of Commons has supreme control over supply. All bills passed by the Parliament of Canada have to be presented to the Governor-General for his assent. He may give his assent or withhold his assent or reserve the bill for the consideration of the Colonial Secretary. Certain bills are always reserved for the decision of the Crown and Colonial Secretary. Theoretically, the King-in-Parliament is the legislative Sovereign for Canada but the sovereign power is seldom exercised in the matter of internal legislation. The veto power of the Crown is no longer exercised with the result that Canada can pass any law it likes.

The legislative powers of the dominion have been increased substantially by the passing of the Statute of Westminster, 1931. The Section 2 of the Statute terminates the application to this dominion and similar other dominions of the Colonial Laws Validating Act of 1865 which precluded the dominions from passing any law conflicting British Statute Law. Section 3 of the Statute gives the dominion power to legislate with extra-territorial effect and thereby to regulate the activity of its citizens. Sec. 4 of the same Statute provides that in future no British Act shall extend

to the dominion as part of its own law unless the dominion has asked for it. Sec. 5 and 6 give the dominion power to legislate independently about merchant shipping and to administer the law in their own courts.

The Canadian constitution represents a federal type of constitution. The functions of the Provincial Legislature have been strictly defined in the British North America Act. The section 91 of the said Act regulates the activity of the Parliament of Canada while Sec. 92 enumerates the power of the Provincial Legislature. The control of the Federation over the provinces is stronger in Canada in view of the following provisions;—(i) The Lieutenant-Governors of the provinces are appointed by the Governor-General. (ii) The Federal Government is competent to disallow acts of the Provincial Legislatures. (iii) The Federal Government enjoys wider powers, all residuary powers lying with the Federation. In the constitution of the Senate the provinces have no voice. All members are nominated for life by the Dominion Government. The result is that the constitution of Canada provides for a federal structure but retains the unitary spirit.

The provinces have been given strictly defined powers. They cannot amend their constitution so as to affect the office of the Lieutenant-Governor. Their functions chiefly relate to matters of local interests including the raising of revenue for provincial purposes and the administration of hospitals, asylums, municipal institutions and administration of justice. Even this limited jurisdiction may be taken away by the Federal Government whenever the Dominion Parliament intends to take action for general advantage. The Judiciary in Canada has a bias for provincial rights and has been in the habit of interpreting the Constitution so as to extend provincial jurisdiction to the detriment of federal authority. Each province has its own Parliament and a Lieutenant-Governor who is appointed by the Governor-General and responsible to him, but he has to act according to the advice of the Ministry.* The real executive is the Cabinet which is responsible to the Legislature.

Under the British North America Act, 1867 the Constitution of Canada can only be amended by the British Parliament; but the British Parliament would amend the Constitution only when Canada requires an amendment, and there is no substantial opposition of the Provincial Government. The constitution is to be amended according to the direction of Canada and the British Parliament will have no discretion in the matter. Again, in 1935 it was agreed in a Dominion Provincial Conference that Canada

would be competent to amend its constitution on lines devised by both the Dominion Parliament and the provincial legislatures.

In the matter of foreign policy it has an independent status. Canada is represented in London by a High Commissioner.

In Canada we find both Federal and Provincial Judiciary. The Federal Judiciary consists of the Supreme Court and the Court of Exchequer and Admiralty. The Supreme Court consists of a Chief Justice and five Puisne judges. They are appointed by the Governor-General but can be removed only when an address for such removal is presented by both Houses of the Dominion Parliament. The Supreme Court has no original jurisdiction. It is competent to hear appeals from the decisions of the provincial highest court in all civil cases. In criminal cases its appellate jurisdiction can be invoked only when the judges of the highest court of the provinces are not unanimous.

The Court of Exchequer and Admiralty exercises revenue jurisdiction; each province has a Superior Court, District Court and a number of County Courts. These courts administer justice according to the law of Dominion. An appeal lies from the Superior Court to the Supreme Court. The judges are appointed by the Governor-General on the advice of the Dominion Government. They hold office during good behaviour and can be removed by the Governor-General on an address from both Houses of Parliament.

The judges of the inferior Courts are appointed by the Provincial Government. Formerly a final appeal to the Privy Council after necessary permission was competent but this solemn right has been taken away by an act of the Canadian Parliament passed after the Statute of Westminster, 1931. But the Privy Council still exercises the proud privilege of interpreting the Constitution.

Like all modern Governments the Government of Canada and the various Provincial Governments have undertaken social welfare services. This extension of function has resulted in a deficit in the budget. To find out solution a Royal Commission was set up in 1937. The report of the Commissioner contains plans for balanced financial relation between the Dominion Government and the Provincial Governments.

APPENDIX C

THE GOVERNMENT OF AUSTRALIA

The Commonwealth of Australia was created by the Act passed by the British Parliament on the 9th July, 1900. The Commonwealth comprises New South Wales, Victoria, Western Australia, South Australia, Queensland and Tasmania. Papua and antractic territories have also been brought under Commonwealth administration.

Section 61 of the Commonwealth of Australia Constitution Act, 1900, provides: "the Executive power of the Commonwealth is vested in the King and is exercisable by the Governor-General as the King's representative and extends to the execution and maintenance of this constitution and of the laws of the Commonwealth."

The Governor-General is appointed by the King on the recommendation of the Commonwealth Government. Such being the case he cannot be expected to have an independent position. The real Executive is the Cabinet consisting of the Prime Minister and ten other ministers. The Cabinet is now formed by the Labour party which is in power and dominates both the Federal and the State Governments. The constitutional usage has made the ministers responsible to the Legislature. The ministers must either be members of the Federal Legislature or get themselves elected as such within three months of their appointment. The Cabinet seldom plays an active part in the administration but gives formal sanction to the measures which the permanent staff propose to undertake.

The Commonwealth of Australia represents a Federal type of Government. The Federal Union which is known as Commonwealth of Australia has distinct organisation while the individual States have their respective government. The Parliament of the Commonwealth determines the jurisdiction of the Federal Government as well as that of the component states. The Governors of the component states are appointed by the Crown. The Commonwealth of Australia Constitution Act enumerates the subjects with regard to which the Commonwealth can legislate and the residuary powers are to be enjoyed by the States. The Commonwealth has control over matters of general concern including currency, defence and external affairs. The Federal control is not very strong in this Dominion. In cases of conflict between the Federal laws and the State laws the former will prevail.

The legislative authority of the Commonwealth is vested in the Federal Parliament consisting of the Senate and the House of

Representatives. The Senate consists of 36 representatives of the component States elected in equal numbers by each of the six original states for a term of six years, one half retiring every three years while the House of Representatives represent the mass of the people and at present contains 76 members. The Senators must be at least 21 years old and must be resident in the Commonwealth for at least 3 years. The Senate has a life of six years and the House of Representatives lasts for three years unless sooner dissolved by the Governor-General.

The Senate is less powerful than the House of Representatives in view of the fact that it cannot originate or amend money bills and may be dissolved in case of disagreement between the two houses.

If the Senate is found to reject a bill passed by the Lower House twice after the interval of three months the deadlock is removed by the Governor-General by dissolving both the Houses and ordering a new election. If the agreement is not arrived at after the re-election a joint sitting of both Houses may be convened and if the unfortunate bill wins the favour of an absolute majority of the members the bill is placed before the Governor-General for his assent.

In Canada such deadlocks are removed by the Governor-General by nominating new members upto the maximum of 8 Senators.

The legislative powers of the Commonwealth are wide. Moore in his *Commonwealth of Australia* remarks, "The Colonial Legislatures are bodies with plenary powers, possessing a general and undefined power of government in their territory over all persons and things therein, and this power extends to the creation of such executive and judicial machinery as well as as such subordinate authorities as appear necessary for the Colonial Legislatures."

The statute of Westminster has extended the legislative powers of the Commonwealth and given legal effect to the Balfour definition regarding the independence and equality of status of Dominions with Great Britain. By virtue of the statute the Dominion is now in a position to enact any law repugnant to the law of England. In spite of the statute of Westminster, 1931 the British Parliament still retains rights to legislate for the Commonwealth in view of the fact that sec. 9(a) of the said statute dispenses with the concurrence of the Parliament of the Commonwealth in any case where the British Parliament could before the statute legislate without such concurrence.

The Constitution of the Commonwealth can be amended by the Federal Legislature by absolute majority and by popular Referendum in which approval of the majority of voters of States has to be secured. Such amendment shall not affect imperial relations. No alteration affecting the representation of the states in the Commonwealth can be made without the express approval of majority of voters within the state concerned. The incorporation of section 105 A in the Constitution Act authorises the Commonwealth to make agreement with the states and to make laws for the enforcement of such agreement.

The Commonwealth Judiciary has a Federal Supreme Court at the helm of the organisation. It is called the High Court of Australia and consists of a Chief Justice and five Judges appointed by the Governor-General. The High Court has original jurisdiction to try cases involving matters arising between States and an appellate jurisdiction to hear appeals preferred from the decisions of its own justices as well as those of other Courts of the Federation. No appeal lies from the decision of the High Court unless the High Court certifies that an appeal should lie. Such certificate is seldom granted. The High Court is the supreme authority to interpret the constitution.

The States have different organisations of government. The Executive is represented by the Governor who administers the territory under his charge in accordance with the advice of the ministers. The state Governors are appointed by the King and owe no responsibility to the Governor-General. The Commonwealth Government has no control over state Government and cannot disallow Act passed by the State Legislature. The constitution of State Legislatures does not follow a uniform rule.

A comparative study of the Constitutions of Canada and Australia reveals the following points of difference:—

- (1) The residuary powers belongs to the States in Australia while those powers are left with the Federal Government in Canada.
- (2) The Governors of Provinces in Australia are appointed by the King while in Canada the Provincial Lieutenant Governors are appointed by the Governor-General of the Federation.
- (3) In Australia the States can while in Canada the Provinces cannot maintain a direct connection with the British Government.
- (4) Unlike Canada the Federal Government of Australia has no veto power over legislations of the States.
- (5) The Senate of Australia is constituted by direct election by the people and contains equal number of representatives from

the States. In Canada the Senators are nominated and we find no equality of representation.

(6) Australia enjoys greater freedom than Canada in respect of amendment of Constitution.

(7) The High Court of Australia possesses the final power of interpreting the Constitution while in Canada such powers are enjoyed by the Judicial Committee of the Privy Council.

APPENDIX D

THE GOVERNMENT OF SOUTH AFRICA

The Constitution of South Africa is essentially unitary in character although it maintains the Federal structure. The Union of South Africa comprises the British colonies on the Cape of Good Hope, Natal, the Transval and the Orange River Colony. It was constituted by an Act of British Parliament in 1909.

In 1947 the mandated territory of South-West Africa was incorporated into the Union.

The Sec. 8 of the South Africa Act, 1909 as modified by the status of Union Act, 1934 provides that the Executive Government of the Union is vested in the King acting on the advice of his Ministers of State for the Union and may be administered by His Majesty in person or by a Governor-General as his representative. The Ministry has got an unfettered authority and can even declare the secession of the Union from the Empire. In the event of any war declared by Great Britain the Union Government unlike the Government of Canada and Australia may declare neutrality and may even sell goods to the enemies.

The Governor-General is appointed by the King and shall have such powers and functions of the King as His Majesty may be pleased to assign to him. He is a nominee of the Ministry and cannot venture to disregard the opinions of Ministers.

The real Executive is the Cabinet composed of the Prime Minister and eleven other Ministers. It bears the same relation with the Union Legislature as the British Cabinet has with the British Parliament.

The legislative authority has been vested in the King and the Parliament consisting of the (1) Senate and (2) the House

of Assembly. The Senate is the Upper Chamber and consists of 40 members of which 32 are elected by the members of the Provincial Council and the Provincial representatives in the Assembly sitting together and 8 are nominated by the Governor-General. The House of Assembly has at present 150 members of whom 61 are elected by the Cape. Since 1936 non-European natives are allowed to send 4 members to the Upper House and 3 members to the Lower House. The term of an elected Senator is 10 years while that of a member of the House of Assembly is five years.

The South Africa Act of 1909 provides that "Parliament of the Union) shall have full power to make laws for peace, order and good government of the Union. The Lower House viz., the House of Assembly is more powerful. The Upper House has scarcely any power to amend money bills which originate only in the Lower House. Bills concerning the appropriation of public revenue can be introduced on the recommendation of the Governor-General. When a bill has been passed by the two Houses, it is sent to the Governor-General for his assent. When the Houses cannot agree on a bill the Lower House may move it in the next session and if the two Houses still differ, the Governor-General convenes a joint meeting of the two Houses and the bill is passed if it wins the approval of a majority of the total number of members of both Houses. In case of rejection of a bill dealing with appropriation of money for the public, such joint sitting may be convened in the very session in which it is rejected.

Unlike the Provinces of Canada the Provinces of the Union are completely subordinate to the Union Government. The form of Government is unitary in character. The Provincial Governments have definite jurisdiction to deal with matters of provincial concern. They have been empowered to levy certain fees and taxes, and the revenue thus raised is supplemented by subsidies from the Union. The status of Union Act, 1934 has safeguarded the interests of the provinces by requiring a petition of the Council before any change of provincial boundary or power can be attempted.

In each Province there is a Legislative Council consisting of as many members as are sent to the House of Assembly by the Province. The Council elects Chairman who regulates the business of the House.

There is an administrator in each province. He is appointed by the Governor-General and holds his office for five years. He is assisted by an Executive Committee consisting of four members elected by the Provincial Council. The Executive Government

of each province is vested in the Administrator and the Executive Committee. This Administrator is fully dependent upon the Union Government.

The Statute of Westminster has contributed much to the independence of this Union.

The Union has a judicial organisation with a Supreme Court at the top. It has an appellate Division with a Chief Justice and four judges of appeal. The decision of the appellate Division is final. There can be no appeal from such Division. In each province there is a provincial Division of the Supreme Court. The Judges, who hold office till they are seventy years old, may be removed only by a resolution of the Parliament.

The constitution can be changed by the Union Parliament and the limitation imposed upon its powers to effect such changes ceased to have any meaning and were finally removed by the Statute of Westminster. The Union Parliament can effect any change in the constitution it likes and has full powers to choose its own king and to declare its cession from Empire. The amendment can be made by ordinary legislative process.

The European element in South Africa controls the politics of the day and has reduced the native population to humiliating position. The Union Government has resorted to a policy of segregation which has told upon the economic and social structure of the natives.

APPENDIX E

THE GOVERNMENT OF ITALY

The constitution of Italy known as the Sardinian constitution of 1848 is both unitary and flexible in character. It is a growing constitution and has undergone considerable changes at the instance of Signor Mussolini who was a prominent figure in Italian Politics.

At the helm of administration we find the Italian king who enjoys power and position analogous to those of King of England. The real executive head is the Prime Minister who practically rules Italy. Formerly, the Cabinet headed by Prime Minister was responsible to the Legislature but this responsible form of Government disappeared with the ascendancy of the Fascists in power. The chief objectives of Mussolini, the Fascist Leader, had been to start a corporate state based on National Fascist Syndicalism and restore peace in Italy by reconciling the various divergent interests. With a view to attaining these objects Signor Mussolini assumed

the position of a dictator, maintained that position until and unless the Great War crippled him and effected capitulation of Italy. The charter of Labour published in 1927 gave out the ideal of national solidarity which all Labourers would try to attain. The employers and the labourers were represented in the recognised syndicate which had the sole right of stipulating for collective labour contracts. In this way the interests of capital and labour are reconciled through the intervention of the syndicate.

Mussolini was assisted in this activity by the Fascist Grand Council which was the principal organ of the state created for the purpose of co-ordinating the various activities and tendering advice to the government on every matter referred to it. The Grand Council consisted of three categories of members who rendered honorary services to the state under the direction of the Head of Government.

There was also the Fascist General Council representing the various syndicates, cultural, educational and charitable bodies.

The Italian Legislature consisted before April 28, 1938 of two chambers—the Chamber of Deputies and the Senate. The Senate was composed of the Princes of Blood Royal and members nominated by the King from among 21 specified groups. The Chamber of Deputies consisted of 400 members selected out of 1000 names submitted by the various associations to the Grand Council of Fascists and formally approved by the Electorate. The Chamber of Deputies was abolished in 1938 and in its place was set up the chamber of the Fasci and corporations composed of 650 members elected partly by the National Council of Fascists party and partly by the National Council of Corporations.

The Executive of the fascist regime owed no responsibility to the Legislature and the Legislature was deprived of its former powers. The Chamber of Fasci and corporations had merely to discuss and approve the executive measures. The Executive government had unlimited power to make laws by Royal Decree. The Prime Minister who was the real head of the Executive could act independently of the Legislature. Other members were nominated by him and responsible to him.

The Italian Cabinet consisted of ministers responsible to the Head of the Government by whom they were appointed.

The recent European war in which Italy sided with Germany has brought Italy under the strong grip of the allied powers. Italy has lost her sovereign power and has to wait anxiously for the terms of treaty to be settled by the foreign secretaries of the five allied powers who sat on the 11th September, 1945 to discuss many thorny problems the foremost of which was the drafting of treaty with Italy. After a good deal of deliberation and dispute between

the allied powers, the terms of the armistice were settled and Italy had to accept them without any objection. The following terms deserve particular attention :—

(i) Italy will do her utmost to deny facilities to Germany which might be used against the United Nations, (ii) Italy must surrender Corsica and all Italian territories on both islands and the mainland to the allies for such use as operational bases and other purposes as the allied might see fit, (iii) Italy must allow free use by the allies of all air-fields in her territories, (iv) Italy must withdraw her armed forces from all participation in the war, (v) Italy must recognise the right of the allied Commander-in-Chief to establish military Government over Italy.

About the type of Government which will be ushered in the Italian colonies there is still going on disputes between U. S. A. and Russia. The U. S. A. has proposed a scheme of administration by an administrator appointed by the United Nations Trusteeship Council resulting in ultimate independence of the colonies. Russia on the other hand favours the grant of trusteeship to the individual states and itself claims trusteeship in North Africa and Red Sea.

APPENDIX F

THE GOVERNMENT OF RUSSIA

The constitution of Russia is the creation of the Central Executive Committee of the Union of the Socialist Soviet Republic. The term Soviet means a council of delegates chosen by the workers.

The first constitution came into being on 6th July, 1923, and vested the political sovereignty in the workers. The constitution has been radically changed by the 8th Congress of the Soviets which met on 5th December, 1936.

According to this constitution of 1923 U.S.S.R. was a federation of Seven Soviet Republics. Under the new constitution the Soviet Union consists of eleven instead of seven republics. The powers of the Union Government are wider and include many subjects which in other federations are left with the constituent States :—Each State of the Union Republic has the constitutional right to secede from the U.S.S.R. The constitution can be amended by the decision of the supreme Soviet of the U.S.S.R. adopted by a majority of not less than two-thirds of the vote in each of its chambers.

The supreme executive authority has been vested in the

Council of People's Commissars of the U. S. S. R., which consists of 3 commissars or ministers chosen by the Supreme Council of Legislature at a joint session of the two Houses. In practice the nominees of the Central Executive of the Communist party have to be chosen by the Supreme Council. This council of People's Commissars carry on administration with the help of advisors or advisory Boards. The Council has its chairman and is responsible to the Supreme Council. At present the executive authority has been vested in Stalin who is the Prime Minister and Minister of foreign affairs.

The constitution of 1936 abolished the Soviet system and the system of indirect election and cancelled the Congress. The Supreme Council of the Union is now elected directly by all the working people. This Supreme Council consist of two Houses:— (i) The Council of the Union and (2) the Council of Nationalities.

The Council of the Union is the lower chamber and consists of members elected by the citizens of the Union on the basis of one Deputy for every three lakhs of populations. The Council of Nationalities contains delegates of eleven Union Republics and of autonomous provinces and national regions. Both the Houses are elected for a term of four years and enjoy equal rights in the sphere of legislation. Rights of Nationalists are safeguarded by the Council of Nationality which enjoy equal powers with the first chamber.

Bills must pass through both these councils and in case of difference of opinion a joint committee of the two Houses is convened. If this joint committee fails to come to an agreement the matter is again reconsidered by each House. If no agreement is arrived at the Presidium has right to dissolve both chambers and hold re-election. The Legislature is by reason of its unwieldy character, not in a position to deliberate fully on all matters of legislation. The greater part of legislation is vested in body of 32 called the Presidium of the Sureme Council.

The Presidium consists of a Chairman, 16 Vice-chairmen one from each Republic and other 15 members. They are elected by the Supreme Council at a joint session. The Chairman is the President of the Soviet Republic. The Supreme Council elects the ministers who are responsible to the Supreme Council.

At the helm of the Judiciary is the Supreme Court consisting of Judges elected by the Supreme Soviet of U.S.S.R. It is competent to decide disputes and to control all judicial activities. It consists of about 30 judges appointed by the Supreme Council in joint session for 5 years. In each constituent Republic we find two kinds of law courts—Peoples' Courts and Special Courts.

The new constitution gives a legal status to the Communist Party which stands for the well-being of the working classes. It is the only Political party in Russia which holds the ultimate authority of the State. In each branch of administration we find a party member for necessary guidance. In fact there is party dictatorship in Russia and Stalin is ordinarily called a dictator because he is the leader of the party and can successfully impose his will on other members of the party.

The new constitution of 1936 which is known as the Stalin constitution has introduced democratic principles of government and enunciated the basic rights and obligations of citizens. Franchise has been extended in all possible ways. It has brought about epoch-making changes in social organisation and has guaranteed many valuable rights. In the previous constitution the right of private property was ignored. Under the present constitution this valuable right has been recognised in respect of a citizen's house and land attached thereto, productive livestock, farm tools and small-scale enterprise which does not exploit labourers and incomes earned by an individual by his personal efforts. Under this regime each citizen is given work on remuneration and training without any expense. The citizens also enjoy freedom of thought and discussion and many other freedoms necessary for the perfection of humanity.

Radical changes have been introduced by the adoption by the two houses of the Supreme Council of M. Molotov's motion in 1944. These have brought in considerable decentralization in U.S.S.R. The Union Republics have been given the right to enter into direct relation and to make treaties with foreign states. Their right to organise battle units have also been recognized.

APPENDIX G

THE GOVERNMENT OF SWITZERLAND

Switzerland has got a highly democratic constitution. It is a small country and for that reason has been the best field for the application of the principle of direct democracy, through Referendum and Initiative. The constitution is federal in character and cannot be amended by the Legislature in the ordinary way. Amendment in the constitution may be proposed either by the Federal Assembly or by the fifty thousand voters but must in either case be submitted to the people by referendum. Effect cannot be given to the proposal unless it has been approved by a majority of the voters and a majority of the cantons constituting the federation.

The constitution is mainly written in character but there are many conventions which influence the orderly administration of the country. The constitution is exhaustive in the definition of individual rights and secures for the individuals many invaluable rights including freedom of the Press and freedom of worship.

The Federation came into being in 1848. It now consists of 19 cantons and six half cantons. The constitution as revised in 1874 enumerates the powers of the Federal Government in the light of American model and gives it wider powers by authorising it to determine cases of Constitutional breach and interfere in matters of commerce, education, monopolies and even private law. It has been empowered to exercise control and supervision over certain spheres of cantonal actions. All residuary powers are vested in the units of federation.

The Federal Legislature is known as the National Assembly. It consists of two houses—The National Council and the Council of State. The members of the National Council are elected by the citizens of the cantons in proportion to the strength of population in each canton. There are as many as 194 members. They hold their seats for four years. The council of State is the Upper Chamber. Each canton is entitled to send two representatives and each half canton sends one representative to his chamber. The two Houses enjoy equal powers in law but in practice the Lower House is more powerful. The powers of the Legislature are limited because true sovereignty belongs to the people who can initiate legislation. Again, the Legislature has little control over the Executive inasmuch as it cannot remove the members of the Federal Council. The Council, however, does never claim an independent position because it is always found to yield to the desire of the Legislature and regulate its activities according to the policy enunciated by the Legislature. The Federal Executive is composed of seven members one of whom is designated as the President of the confederation. The members are elected for four years by the National Assembly. The member who is elected President holds his office for one year. The members are re-eligible for unlimited terms and cannot be removed by the legislature. Thus they do not form the Cabinet in the English sense of the term. Each of these members is in charge of a department, frame and submit budget and can attend either house of the Legislature for answering questions. They have no right to vote. They do not belong to any party in the Legislature nor do they hold their office at the sweet will of the Legislature. They are allowed to hold their office as long as they are willing to serve. This stability and non-partisan character of the Executive makes for efficiency in administration. The Federal Council sometimes acts as Administrative court.

The Federal Judiciary consists of twenty-four judges appointed by the National Assembly for six years and may be re-elected. It has both original jurisdiction and appellate jurisdiction. The original jurisdiction relates to matters in dispute between the confederation and cantons as also between different cantons. It hears appeals from the cantonal courts. It also acts as an administrative court. It can declare any cantonal law to be invalid but has no such power in relation to any federal law.

The Swiss Civil Service is organised on efficient lines. Recruitment is made on the result of competitive examination. The Civil servants have their own organisation which has already succeeded in securing better terms of employment.

Another outstanding feature of the Swiss constitution is the sovereignty of the people. The people there are found to participate in the government in three ways :—

(a) The general meeting held by the people in each of the six cantons to discuss and decide diverse matters relating to constitution, enactment of laws and imposition of taxes.

(b) The people can assert their influence by means of Referendum. Such Referendum is obligatory when any amendment in the federal constitution is under contemplation. Eleven cantons have admitted obligatory Referendum for ordinary laws.

(c) The people can also initiate legislative measures. For initiation of an amendment to the federal constitution 50,000 voters must signify their assent. In the case of cantonal legislation initiation may be taken by the people for enacting ordinary laws.

APPENDIX H

GOVERNMENT OF BURMA

The constitution of the Union of Burma as framed by the people of Burma including the frontier areas and the Karenni States is, as the preamble shows, founded on the principle of Justice, Liberty and Equality. It purports to guarantee and to secure to all citizens (i) justice social, economic and political ; (ii) liberty of thought, expression, belief, faith, worship, vocation, association and action ; (iii) Equality of status, of opportunity and before the Law. This constitution came into force on 24th September, 1947.

Burma is now an independent sovereign Republic comprising the territories which were formerly administered under the British rule and the Karenni States.

The sovereignty of this Republic resides in the people.

The constitution enumerates the fundamental rights including equality before the law, equality of opportunity in the matter of public services. The citizens shall have personal liberty and free scope for the enjoyment of property. They will have freedom of thought and freedom of forming association and holding meetings, freedom of conscience and religion. They will have full culture and educational rights and rights of private property and initiative.

Relation of the State to peasants and workers have been defined.

President

The President of the Republic shall be elected by both chambers of the Parliament in joint session by secret ballot. He shall not be a member of either chamber of the Parliament. He shall hold office for five years unless he resigns earlier or dies or becomes permanently incapacitated.

The President cannot be re-elected for more than two terms. He must be citizen of the Union and qualified to be member of the Union Parliament. In the event of a vacancy in the office of the President his powers shall be exercised by a commission consisting of the Chief Justice of the Union, the speaker of the chamber of Nationalities and the speaker of the chamber of the Deputies.

The President shall summon the Parliament for the purpose of electing new president during the three months preceding the expiration of his term of office. He may be impeached for treason, violation of the constitution or gross misconduct.

He shall have an official residence and get such allowances and emoluments as may be prescribed by the constitution. The President shall appoint the Prime Minister nominated by the chamber of Deputies. This Prime Minister shall be the head of the Union Government and the President has to appoint other members of the Union Government according to the nomination of the Prime Minister. The President shall summon, prorogue or dissolve the chamber of Deputies on the advice of the Prime Minister. The Legislature consists of the President of the Union, the Chamber of Deputies and the Chamber of Nationalities. This Legislature is to be called the Parliament of the Union.

The Session of the Parliament shall be convened at least once in every year.

The Chamber shall elect Speakers and Deputy Speakers.

The Chamber of Deputies shall be composed of members who represent constituencies determined by law. The members shall be as nearly as practicable twice the number of the members of the Chamber of Nationalities. The Chamber of Nationalities shall consist of one hundred and twenty-five members occupying seats as stated in the Second Schedule of the Constitution.

The exclusive power of legislation is vested in Parliament except in so far as such power has been assigned to the State Council.

Every bill passed by the Chamber of Deputies must be sent to the Chamber of Nationalities which can amend the same except when the bill concerned is a money bill. Money bills shall be initiated in the Chamber of Deputies alone. After the Bill has been passed by both Chambers it shall be presented to the President for his signature and promulgation as an act and the President is to sign the same not later than seven days after the presentation.

The Union Government shall consist of the Prime Ministers and several other members nominated by him and formally appointed by the President. The Government shall be collectively responsible to the Chamber of Deputies. The Prime Minister shall resign his office when he fails to command the support of the majority or he may advise the President to dissolve the Parliament. All executive actions shall be taken in the name of the President.

Judiciary

Justice shall be administered by the courts established by the Constitution and by judges appointed in accordance with law. The courts shall comprise courts of the first instance and courts of Appeal. The court of final appeal is known as Supreme Court. The High Court shall have exclusive original jurisdiction in all matters arising under treaty made by the Union, in disputes between the Union and its units and in other matters defined by law.

The members of the Parliament representing the Shan State shall constitute the Shan State Council which will recommend to the Parliament the passing of any law relating to matter in regard to which the said council is not competent to legislate.

All members representing the Karenni State in the Parliament shall form the Karenni State Council.

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PART II

**NEW CONSTITUTION OF INDIA
1950**

NEW CONSTITUTION OF INDIA

1. The New Constitution: Its Origin: Its Aims.

The New Constitution of India has been drawn up by the Constituent Assembly. This Assembly, again, is a representative body formed with the object of framing the constitution of the Indian Union. The Constituent Assembly consulted carefully the opinion of the people of India and succeeded in framing the constitution which, as the preamble shows, has the characteristic feature of a Sovereign Democratic Republic and truly represents the will of the people of India.

The aim of this new constitution is (i) to secure justice in spheres economic, political and social, (ii) to guarantee liberty of thought, expression, belief, faith and worship, (iii) to ensure equality of status and opportunity and (iv) to promote fraternity which makes for national solidarity and at the same time maintains the dignity of the individual.

2. Characteristics of the New Constitution.

(i) **The Constitution of India is mainly written in character.** Like the Constitutions of Germany, France and U.S.A., this Constitution of India formulates the fundamental rights of citizens. We can not however deny the unwritten element in view of the fact that it fully recognises the validity of customs and usages which have the force of law.

(ii) **The Constitution is rigid in character.** Unlike the constitution of Great Britain, this constitution cannot be amended by the ordinary Legislature in the ordinary way. It is no doubt true that the constitution can be amended by the Union Parliament but the procedure followed by the Parliament is different from that followed in the matter of passing ordinary laws. The proposal for amendment may be introduced in either House of the Parliament in the form of a Bill but the Bill shall not be deemed to have been passed unless it wins the approval of not less than two-thirds of the members of each House present and voting. When this approval has been won it will be presented to the President for assent. If the bill secures such assent, the amendment finds place in the statute book.

Again, when the proposed amendment contravenes Articles 54, 55, 73, 162 and 241 and Chapter iv of Part v, Chapter v of Part vi

and Chapter i of Part ix or any of the lists in the Seventh Schedule or the representation of the States in Parliament or the provision of Article 368, the said amendment must also be ratified by the Legislatures of not less than one-half of the States specified in Parts A and B of the First Schedule by resolutions to that effect before the Bill making provision for such amendment is presented to the President for assent.

(iii) **The constitution is democratic and republican in character.** There is no hereditary element in this constitution. The Chief Executive head is the President who is elected by electoral college consisting of representatives of the people in the Union and State Legislatures.

(iv) **The constitution is federal in structure but unitary in spirit.** In contravention of the true principle of federation this constitution does not recognise an equality of status among the component States. The constitution classifies States under three different groups and fixes the unequal number of representatives which each such State is entitled to send to the Union Legislature. Again, the extent of control of the Union Government over the officers of the States is more stringent in this Indian Union than in any other federal government. The existence of concurrent list militates against the federal principle. Any law made by the Union Parliament in regard to any matter enumerated in the concurrent list shall prevail and be enforceable within the States and any state law relating to the same matter shall become void to the extent of its repugnancy to the Union Law. Again, the executive power of the Union shall extend to the giving of such direction to any State as may appear to the Government of India to be necessary for the purpose of ensuring compliance within the State of the laws made by the Union Parliament. The Union Parliament may also make laws with a view to conferring power and imposing duties upon the States.

The provision for appointment of the Governors of the State by the President of the Union is another factor which goes to extend the control of the Union executive over the administration of the States. This Governor, again, shall hold his office during the pleasure of the President who shall also be competent to make such provision as he thinks fit for the discharge of function of the Governor in any contingency not provided for in the constitution.

(v) **The constitution has adopted roughly the parliamentary form of administration.** There are provisions for Council of Ministers in the Union and in the state administration. The Council of Ministers in the Union shall be collectively responsible to the House of People. In the same way the Council

of Ministers in a State shall remain collectively responsible to the Legislative Assembly of the State. This provision for collective responsibility of the Council of Ministers is associated with another provision which compels the Ministers to hold office during the pleasure of the President who appoints them. The Ministers have thus got to serve two masters—The President and the Legislature. In the sphere of State administration the Council of Ministers occupy an even inferior rank. The Ministers have merely got the constitutional right of advising and aiding the Governor in the exercise of his functions except in so far as he is by or under this constitution required to exercise his functions in his discretion. The new constitution again has not defined this discretionary functions and leaves these matters completely to the decision of the Governor who has to exercise these functions. This executive pre-eminence of a nominated Governor goes to extend the control of the President over the administration of the State and impedes the autonomy of the States and the growth of democratic and responsible government within the component parts of the Union. Judged in this light the new constitution does not make any improvement in the position of the States or provinces under the British rule.

3. The Union and its Territories.

India which is a Union of States is composed of the States and the territories mentioned in the First Schedule appended to the Constitution of India. It includes, (i) the States of Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, East Punjab, The United Provinces and West Bengal mentioned in Part A of the First Schedule, (ii) Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union, Rajasthan, Sourashtra, Travancore-Cochin and Bindyha Pradesh contained in Part B of the said Schedule, (iii) Ajmer, Bhopal, Belaspur, Cooch-Bihar, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur and Tripura mentioned in Part C of the said Schedule, (iv) The Andaman and Nicobar Islands in Part D of the said Schedule and (v) such other territories as may be acquired.

New States may be included within the Union or may be established by law made by the Union Parliament.

4. The Citizenship of the Indian Union.

The new constitution of India recognises citizenship of persons who have their domicile in the territory of India and fulfil one or other of the following conditions:—

- (a) birth in the territory,
- (b) having parents born in the territory of India,

(c) residence in the territory of India for not less than five years immediately preceding the commencement of the constitution.

The constitution also recognises as citizens persons who have migrated from Pakistan to the territory of India on their fulfilling the following conditions:—

(a) Their own birth or birth of their parents or grand parents in India as it stood under the Government of India Act, 1935.

(b) Ordinary residence in the territory of India in case of migration before the nineteenth day of July, 1948 or registration as a citizen according to the provisions laid down in the constitution in case of migration on or after the aforesaid date.

Citizenship is denied to persons who migrated to Pakistan after the first day of March, 1947, unless they have returned to the territory of India under a Permit of resettlement or permanent return issued by or under the authority of any law.

Citizenship is also denied to persons who have voluntarily acquired the citizenship of any foreign state.

5. Fundamental Rights of Indian Citizens.

Certain fundamental rights of the Indian citizens have been enunciated by the constitution of India. These are solemn rights which no state or Government within the Union will be entitled to take away and the existing law should become void to the extent it infringes these rights. These fundamental rights include the following rights:—

(a) Right to equality before law and equality in the matter of enjoyment of public rights or use of public property irrespective of religion, race, caste, sex, place of birth.

(b) Right to equal opportunity for Government services.

(c) Equality of status in society. To promote this untouchability has been forbidden and titles conferred by the State abolished.

(d) Right to freedom which includes freedom of speech and expression, freedom to assemble peaceably, freedom to form association, freedom of movement within the union, freedom of residence, freedom of acquiring, holding or disposing of property, freedom of profession. This freedom in various spheres is to be exercised without infringing the laws which the state may enact in the interest of public good, morality, decency or order.

(e) Right to life and property which necessarily implies that no person shall be deprived of his life and property except in

due course of law and that no person shall be detained without trial.

(f) Right to profess religion freely without affecting public order, morality and health.

(g) Right to education and culture which includes the right to retain distinct language and script.

(h) Right to constitutional remedies and to move the Supreme Court for appropriate writs including writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari.

6. The Principle of State Policy.

The constitution of India enunciates the principles of State policy. The said policy shall be so directed as (i) to provide for the citizens adequate means of livelihood, (ii) to distribute the ownership and control of material resources in a way which promotes common good, (iii) to regulate the economic system in a manner which does not lead to the concentration of wealth and means of production to the common detriment, (iv) to ensure equality of wages for the same work irrespective of sex, (v) to apportion work according to age or strength with a view to preventing abuse of health and strength.

Village panchayats should be organised and endowed with authority to function as a unit of government. Workers should be provided with work, living wages, conditions of work which ensure a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Cottage industries should be promoted on individual or co-operative lines.

There should be a uniform civil code throughout the territory of India.

Free and compulsory education for children within fourteen years of age should be promoted.

The economic and educational interest of the weaker sections of the community should receive particular attention.

Agriculture and animal husbandry should be organised on scientific lines. Particular care should be taken to improve the breeds and to prohibit slaughter of cows and calves.

The Judiciary should be separated from the Executive. Promotion of international peace and security should be other objectives of State policy.

7. The Union Executive: Its Organisation.

At the helm of the Executive Department of the Union we find the President of India in whom is vested the executive power exercisable by him either directly or through officers subordinate to him in accordance with the constitutional provisions. The President shall have the supreme command of the Defence Forces, but he shall exercise this power according to the law of the Union.

The President is to be elected by the members of the Electoral College consisting of the elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of the States. The said election should be held by secret ballot and in accordance with the system of proportional representation by means of single transferable vote.

The President shall remain in office for a term of five years from the date on which he joins his office and shall be eligible for re-elections. The President however may be removed from office by means of impeachment on the ground of violation of constitution before the expiry of the term. He may resign his office. He is to continue to hold his office until the entry of his successor even though his term has expired.

The President shall get such emoluments and allowances and privileges as may be fixed by the Union Parliament and until these are so determined he shall get Rs. 10,000 per month together with such allowances as were payable to the Governor-General of the Dominion immediately before the commencement of this Constitution. He shall hold no other office of profit. The President shall be entitled to use his official residence without payment of rent.

A person shall be eligible for the post of the President on his fulfilling the following conditions:—(a) He must be a citizen of India, (b) must have completed the age of thirty-five years and (c) must have such qualifications as are required in a member of the Lower House of the Union Parliament.

8. Impeachment of President.

The President may be removed from office by means of impeachment by either House of Parliament when such proposal for impeachment has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House concerned and supported by means of resolution passed by a majority of not less than two-thirds of the total membership of the House. The charge of impeachment should then be investigated by the other House and must be sup-

ported by resolution passed by a majority of not less than two-thirds of the total membership of the House.

9. Vice-President and his Office.

The Union of India shall have a Vice-President who shall be the ex-officio Chairman of the Council of States. When this Vice-President assumes the office of the President by reason of his death, resignation, removal and remains in such office until the successor of the President is elected and enters the office he shall not perform the duties of the office of the chairman of the Council of State.

The Vice-President shall also act as President when the latter cannot discharge his function by reason of his absence, illness or any other cause. When the Vice-President is exercising the functions of the President, he shall get the same emoluments and allowances as are payable to the President unless any other emoluments and allowances are determined by the Union Parliament.

The Vice-President shall be elected by the members of both Houses of Parliament who will assemble for that purpose at a joint meeting. The election shall be held in accordance with the system of proportional representation by means of single transferable vote and by way of secret voting. The Vice-President shall not be a member of either House of Parliament. If he is already such member, he shall vacate his seat as soon as he enters the office of the Vice-President.

To be eligible for election as Vice-President the candidate must have the following qualifications :—

(a) He must be a citizen of India, (b) must be 35 years old and (c) must possess such qualification as are required in a candidate for a seat in the Council of States and must not hold any office of profit other than those of the President, Vice-President, Governor, Rajpramukh, Upa-Rajpramukh or minister.

The Vice-President shall continue in his office for a term of five years and until his successor enters office. He may tender his resignation to the President or may be removed by resolution of the Council of States passed by a majority of all the then members of the Council of States and agreed to by the House of People.

The Supreme Court is the final authority of deciding disputes of election of the President and the Vice-President.

10. Position and power of the President.

The President who has been placed at the helm of the Union Executive has to exercise the executive powers vested in him by

himself or by officers subordinate to him. All executive actions shall be taken in his name. He shall make rules for the convenient transaction of the business of the Government and allocate the said business among the ministers. The Prime Minister is under obligation to communicate their collective decisions (that is, the decision of the Council of Ministers) regarding the administration and proposals for legislation to him. The President may also demand information relating to matters of administration and proposals for legislation and the Prime Minister is under a duty to furnish such information. The individual decision of a minister relating to any matter placed in his charge may be submitted by the Prime Minister to the consideration of the Council of Ministers at the requisition of the President.

The President shall appoint the Prime Minister and other ministers on the advice of the Prime Minister. These ministers shall hold office during his pleasure. They are again to aid and advise the President in the exercise of his functions. All these provisions clearly indicate that the President of the Union may, in the absence of any convention which is still to grow, impose his will upon the Council of Ministers and enforce obedience to his dictates. The ministers, again cannot displease him, because they hold their office during the pleasure of the President who can dismiss them at his sweet will and pleasure.

The Constitution of India confers upon the President the power of making rules for the convenient transaction of the business and the President is at liberty to frame such rules in a way which goes to strengthen his grip over the officers of administration. Again, the Constitution is silent as to the distribution of the Government business among the ministers. The President is to make rules for such allocation but who is then going to allocate the business? The Prime Minister has been given no such power by the constitution. If in framing the rules for allocation, the President chooses to keep the matter in his own hand he will be in a position to strengthen his grip over the ministers who will naturally placate him for getting more important portfolios in the ministry. The President shall also make rules and prescribe the manner in which orders and other instruments made by him shall be authenticated. The President shall appoint the Attorney-General for India who shall hold office during his pleasure and receive such remuneration as he may, determine. Besides his constitutional function, he shall perform such functions as the President may determine.

The extent of the executive functions of the Union has been defined by the constitution. It shall extend to (i) matters with

respect to which the Union Parliament has power to legislate and (ii) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. In exercise of these powers the Union Executive shall not encroach upon matters falling within the ambit of legislative power of the States specified in Part A and Part B of the First Schedule.

The President has been given the power to grant pardons, reprieves, respites or remissions of punishment, or to suspend, remit or commit the sentence in certain specified cases.

In the domain of legislation we find that the President is an important figure. He is a part and parcel of the Legislature and can nominate as many as twelve members to the Council of States. He is to summon the House of Parliament to meet twice at least in the year. He shall determine the time and place of such meeting. He can prorogue the Houses and dissolve the House of the people. He may address either House and insist on presence of the members for the purpose.

He may send messages to either House and the House concerned is under obligation to consider the matter at its earliest convenience. In case of vacancy in the offices of the Speaker and Deputy Speaker, the President has to appoint a member of the House to act as Speaker.

The President may, by message, notify his intention to convene a joint sitting of the two Houses under the following circumstances:—

(i) When the bill passed by one House and sent to the other House stands rejected in the latter House, or

(ii) When there is a disagreement as to the amendment to be made or

(iii) When the other House cannot pass the bill within six months from the date of its reception.

When such intention is expressed by the President, the House shall meet in the joint sitting.

The President has a final say on legislation. Every Bill after it has been passed by the Houses of Parliament is to be submitted to the President who is competent to assent to the Bill or withhold his assent from the Bill. In the latter case the Bill drops. If however the President chooses to send a message for reconsideration of the Bill by the Houses and the said Houses again pass the Bill after reconsideration in the light of the message sent to them, the President cannot withhold his assent from the Bill. If the latter course is not adopted by the President, the Legislature has no

other way of making their bill effective and the President can veto the Bill according to his sweet will and pleasure. Thus the President of the Union who happens to be the head of the Executive Department is given full control over legislation and the rights and liberties of the people cannot but be at stake on account of the concentration of legislative and executive functions in the same hand.

In the financial sphere we find that the President of the Union occupies an enviable position. He has to lay before both the Houses of Parliament an annual financial statement containing the sums required to meet expenditure declared to be a charge on the consolidated fund by the constitution as well as other expenditure proposed to be incurred out of the consolidated fund. In the latter kind of expenditure no demand for grant shall be made except on the recommendation of the President.

The President may also submit a supplementary financial statement when the amount already authorised by law is found to be insufficient.

No Money Bill as defined in Article 110 of the Constitution shall be introduced or moved except on the recommendation of the President. In addition to these ordinary powers of the President in the legislative domain, the President has been empowered to promulgate ordinances during the recess of the Parliament when he is satisfied that circumstances justify the taking of immediate action. Such ordinances shall have the force and effect of law until the expiration of six weeks from the re-assembly of Parliament to which such ordinances shall be placed. Such ordinances may be disapproved by the two Houses by means of resolutions in which case the ordinances will cease to operate after the passing of the second resolution although the aforesaid period of six weeks has not elapsed since the date of re-assembly of the Parliament.

The President, again, may withdraw the ordinances at any time.

In the sphere of Judiciary the President has been empowered to appoint the Chief Justice of the Supreme Court of India and also other judges in consultation with the Chief Justice. A judge of the Supreme Court cannot be removed except by an order of the President. The rules for regulating the practice and procedure to be followed by the Supreme Court should be made with the approval of the President.

The President shall appoint the Controller and Auditor-General of India and may remove him from office under certain conditions.

All the above provisions go to prove that the President is the outstanding figure in every sphere of administration and the principle of Executive pre-eminence which characterised the Indian administration under the British Rule has not disappeared from the new constitution of India.

11. The Council of Ministers: Their Position.

The constitution of India makes provision for a Council of Ministers with the Prime Minister at the helm.* This Council of Ministers will consist of the Prime Minister and his colleagues. The Prime Minister shall be appointed by the President and the other ministers shall be similarly appointed on the advice of the Prime Minister. They shall hold their office during the pleasure of the President and at the same time will be collectively responsible to the House of People. Oaths of office and secrecy should be administered by the President before the ministers enter office. A minister must vacate his office if he ceases to be a member of the Legislature for six consecutive months.

The Ministers shall get such salaries and allowances as shall be determined by Parliament by means of law. Unless these salaries and allowances have been so determined, the Prime Minister and other ministers shall get such salaries and allowances as were payable respectively to the Prime Minister and other ministers for the Dominion of India before the commencement of the constitution.

This Council of Ministers has been given the constitutional right of aiding and advising the President in the exercise of his functions. If this advice and aid are not accepted by the President, we do not know where this Council of Ministers will stand. Again, it is doubtful whether the ministers who hold their office during the pleasure of the President will have the strength and courage to impose their will on the President and reduce the latter to the position of a constitutional head. In Great Britain the growth of convention has made for harmonious working of the administrative machinery in which the king occupies the position of a constitutional figurehead and the real executive is the Cabinet. This convention has not found time to grow and we do not know whether it will grow ever. Under the present state of things the Council of Ministers is utterly helpless, if the President refuses to accept its advice and aid. The present constitution therefore leaves the true power in the hand of the President and makes a sham show of Cabinet form of Government.

The ministers, again, have got a precarious position. They are responsible collectively to the House of the people in which a

vote of want of confidence will lead to their fall and resignation. They are at the same time to hold their office during the pleasure of the President. They have thus to please two masters—the President and the Legislature and will surely fail to please any one of them. This precarious position of the Ministers cannot but make them inefficient in the sphere of administration.

The ministers again have no free scope for managing the administrative affairs. They must conform to the rules framed by the President for the convenient transaction of business. Rule regarding the allocation of business among ministers is also to be framed by the President. This will naturally strengthen the grip of the President over the ministers.

12. The Parliament : its Constitution.

The Legislature of the Union is the Parliament which consists of the President and the two Houses viz., (i) The Council of States and (ii) The House of People.

The Council of States which represents the Upper House shall consist of 250 members of whom 12 members shall be nominated by the President so as to include in the council persons with special knowledge or practical experience in the domains of literature, science, arts and social service.

The remaining 238 members shall represent the component States of the Union. The number of seats to which each State is entitled has been specified in the Fourth Schedule. According to this schedule The United Provinces will send 31 representatives while West Bengal will send only 14 representatives.

These representatives will be elected by the elected members of the Legislative Assembly in each of the States mentioned in Part A or Part B in accordance with the principle of proportional representation by means of single transferable vote.

The mode of election of representatives of the other States will be prescribed by law made by the Parliament.

The House of People is the Lower House of the Parliament consisting of not more than 500 members to be elected directly by the voters of the States.

The Parliament may, by law, provide for the special representation of territories comprised within the territory of India but not included within any State. Similar provisions may be made by means of laws for the representation of States in Part C and territories other than States. The President may also nominate two members to represent the Anglo-Indian community. For the

purpose of election the States should be divided, grouped or formed into a number of territorial constituencies, each of which shall send such number of members as shall ensure the representation of not less than 50,000 and not more than 750,000 of the population by one member.

The Council of States shall not be subject to dissolution but as nearly as possible one-third of the members shall retire as soon as may be on the expiration of the second year.

The House of the people shall have a life of five years from the date appointed for its first meeting but its life may be extended by reason of a proclamation of emergency for a period not exceeding one year at a time and not exceeding in any case for more than six months after the proclamation is at an end.

A candidate shall not be eligible for a seat in the Parliament unless he possesses the following qualifications :—

- (i) He is a citizen of India.
- (ii) He is 30 years old when he is a candidate for a seat in the Upper House or 25 years old when he seeks for a seat in the Lower House.
- (iii) He possesses such other qualifications as may be prescribed by an Act of the Parliament. The Houses of Parliament must be summoned to meet at least twice in every year. This should be done by the President who shall also address both Houses of Parliament assembled together at the commencement of every session.

The Houses may be prorogued by the President and the House of People may be dissolved by the President.

The Council of States has for its ex-officio Chairman the Vice-President of India while the Deputy Chairman shall be chosen by the members of the Council of States. The House of People shall choose two members of the House to be respectively the Speaker and Deputy Speaker thereof. The Speaker shall remain in office even after dissolution until immediately before the first meeting after dissolution. He shall vacate his office when he ceases to be a member of the House of People. He may be removed from office by the House of People when a resolution to that effect has been passed by a majority of the members of the House.

Each House of Parliament shall have a separate Secretariat staff.

The Chairman and the Deputy-chairman of the Council of States shall have their remuneration fixed by an Act of the Parliament and unless so fixed shall get respectively the salaries and

allowances which were payable to the Speaker and Deputy Speaker of the Constituent Assembly of the Dominion of India. The salaries of the Speaker and the Deputy Speaker of the House of People shall be similarly determined.

13. Powers, Privileges and Immunities of members of Parliament.

The members of the Parliament shall enjoy the freedom of speech subject to the provisions of the constitution and the standing orders regulating the procedure of Parliament. They shall not be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament. They shall enjoy such other powers, privilege and immunities as may be defined by an Act of the Parliament and unless so defined they shall enjoy those which are available to the members of the House of Commons at the commencement of the constitution.

They shall receive such salaries and allowances as the House of Parliament may determine by Act and unless so determined such salaries and allowances as are payable to the members of the Constituent Assembly of the Dominion of India.

14. Legislative Procedure.

Either House of the Legislature may introduce bills but money bills shall not be introduced in the Council of States. A bill shall be deemed to have been passed by the Parliament when it wins the support of the majority of the members in each House. If any amendment is made, the amendment should be agreed to by both Houses. The prorogation of the Houses shall not cause the pending bills to lapse. Bills pending in the Council of States but not yet presented to the House of People shall not lapse by reason of the dissolution of the House of People. But a bill which is pending in the House of People will lapse on account of the dissolution of the said House. In the same way a bill which is pending in the Council of States after the approval of the House of People shall lapse on account of the dissolution of the House of People.

Joint sitting of the two Houses may be convened by the President under the following circumstances :—

- (a) When a bill after having been passed by one of the Houses stands rejected by the other House:
- (b) When the said bill is amended and the amendments fail to find the support of the Houses:
- (c) When more than six months have elapsed since the

entry of the bill in the other House and the bill remains pending there.

If in this joint sitting the bill wins a majority of supporters it shall be deemed to have been passed by the Parliament.

The procedure for the passage of Money Bill deviates from the general procedure outlined above. Such bills shall be introduced in the House of People. If a money Bill has won the approval of the House of People, it shall be sent to the Council of State which shall be competent to make recommendations within fourteen days from the date of its receipt. The House of People may accept or reject the recommendation. If the House accepts the recommendation, it shall be deemed to have been passed with the recommendation of the Council of States. If the House rejects the recommendation, the Bill shall be deemed to have been passed in its original form. Every such money Bill shall bear the certificate signed by the Speaker of the House of People. When a Bill has been passed by the both Houses of the Parliament in the aforesaid manner it shall be presented to the President who may either assent to or withhold his assent from the Bill. In the former case the Bill becomes an Act while in the latter case the Bill drops unless the President chooses in cases of Bills other than money Bills to send the Bill for reconsideration of both the Houses and the said Houses again pass the Bill either with or without amendment.

Estimates of Expenditure other than those charged upon the Consolidated Fund shall be submitted to the House of People in the form of Demands for grants and the House of People may either assent or refuse assent to or reduce the demand for grant but no demand for grant shall be made except on the recommendation of the President.

After these grants have been made in the manner prescribed above, appropriation Bills should be introduced for the appropriation of money from the consolidated fund in order to meet the grants made by the House of People and the expenditure charged upon the consolidated fund.

The House of People has also been empowered to make any grant in advance in order to meet an estimated expenditure and an unexpected demand before the prescribed procedure has been completely adopted.

15. The Union Judiciary.

At the helm of the Judicial organisation we find the Supreme Court of India consisting of the Chief Justice of India and a

number of not more than seven other judges. The number of judges may however be increased by Parliament by means of law.

The appointment of this Chief Justice and other judges must be made by the President by warrant under his hand and seal. In appointing the other judges the Chief Justice of India shall be consulted.

Every judge shall have the following qualifications:—

- (a) He must be a citizen of India.
- (b) He must either be a judge of a High Court or of two or more such courts in succession for at least five years or be an Advocate of such courts for at least ten years or be a distinguished jurist.

Every judge shall continue in his judicial office until he attains the age of 65 years but he may resign or be removed from service earlier. Such removal can be made by an order of the President after an address by each House of the Parliament requesting such removal on the ground of proved misbehaviour or incapacity, provided the address wins the support of majority of at least two-thirds of the members present and voting as well as of majority of the entire members of the house.

The Chief Justice of India shall get his salary at the rate of Rs. 5,000 per mensem while other judges will get Rs. 4,000 each per mensem. Each judge shall get free of rent a house to be used as an official residence. In addition to salary every judge shall be entitled to such allowances and privileges as may be determined by Parliament.

When the Chief Justice is unable to work by reason of his absence or otherwise, his work will be performed by any other Judge of the Supreme Court to be appointed by the President.

Provision has also been made for the appointment of adhoc judges when the Supreme Court cannot hold its session for want of quorum. Such ad hoc Judges must be chosen from among the Judges of a High Court having the necessary qualifications of becoming a Judge of the Supreme Court. This appointment is to be made by the Chief Justice of India with the previous consent of the President.

A Judge who has held office as a judge of the Supreme Court shall not plead or act in any court or before any authority within the territory of India.

The Supreme Court shall sit at Delhi or in such other place as may be fixed by the Chief Justice with the approval of the President. It shall be a Court of Record and shall have original jurisdiction in deciding disputes (i) between the Government of India and one or more states, (ii) between the Government of India and any state or states on the one side and one or more states on the other when such disputes involve any question on which the existence or extent of a legal right depends and does not concern any treaty, agreement, covenant, engagement, sanad or similar other instruments executed by any state mentioned in Part B before the commencement of the constitution and remaining in force after such commencement.

Besides this original jurisdiction the Supreme Court shall have appellate jurisdiction to hear appeals from any judgment, decree or final order of a High Court in any territory of India, whether in Civil, Criminal or other Proceeding if the High Court certifies that the case involves a substantial question of law as to the interpretation of this constitution. In the absence of such certificate the Supreme Court may grant special leave to appeal for the same reason.

An appeal will also lie to the Supreme Court in civil matters disposed of by judgment, decree or final order passed by any High Court in the territory of India when the said High Court certifies that the value of the subject matter is not less than twenty thousand rupees or the case is a fit one for appeal to the Supreme Court; when the judgment affirms the judgment of a Court below there must be a certificate to the effect that the case involves some substantial question of law.

In criminal proceedings such appellate jurisdiction can be invoked against judgment, final order or sentence passed by a High Court in the following cases, viz.

- (i) The High Court has on appeal reversed any order of acquittal and passed sentence of death on the accused, or
- (ii) the High Court has tried a case after withdrawal from a subordinate court and passed a sentence of death on the accused, or
- (iii) the High Court certifies that the case is a fit one for appeal to the Supreme Court.

Additional jurisdiction of hearing appeals may be conferred on the Supreme Court by laws made by the Parliament. The Supreme Court shall also exercise the jurisdiction and powers exercisable by the Federal Court immediately before the com-

mencement of the constitution. Appeals from the decision of other tribunals to the Supreme Court will be competent only when special leave is granted by the Supreme Court and the tribunal concerned is not constituted by any law relating to the Armed Forces.

The Parliament may make laws with a view to conferring on the Supreme Court power to issue writs in the nature of Habeas Corpus, mandamus, prohibition, quo warranto and certiorari.

The law as found in the decision of the Supreme Court shall be followed by the courts in the territory of India.

The Supreme Court is to provide the President with opinion when the President requires such opinion on certain matters of public importance.

The Supreme Court has been empowered to make rules for regulating the practice and procedure of the Court.

16. Comptroller and Auditor-General of India.

The President of the Union shall appoint a comptroller and Auditor-General by a warrant under his hand and seal. He shall get such salaries and allowances as may be determined by the Parliament and unless so determined Rs. 4,000 per mensem as salary. He shall perform such duties in relation to the accounts of the Union and of the states as may be prescribed by law made by the Parliament. Until such provision has been made he shall exercise such powers as are exercisable by the Auditor-General of India immediately before the commencement of the constitution.

17. The Governor: his powers and privileges.

The Governor has been placed at the helm of the State Government. All executive powers are vested in him to be exercised either directly or through officers, subordinate to him.

Governor of a State shall be appointed by the President by warrant under his hand and seal. He shall hold office during the pleasure of the President who can remove him at any time before the expiration of the term of five years for which he is to hold his office. He shall however remain in office even after the expiry of the term until his successor enters upon his office.

To be eligible for appointment as Governor a person shall have the following qualifications:—

- (1) He must be a citizen of India.

- (2) He must have completed the age of 35 years.
- (3) He must not be a member of either House of Parliament or of a House of the legislature of any state.
- (4) He must not hold any other office of profit.

He shall get such emoluments, allowances and privileges as may be determined by Parliament by law and until so determined Rs. 5,500 per mensem as salary and such allowances and privileges as were payable to the governors of the corresponding provinces before the commencement of the constitution..

In addition to these salaries, allowances and privileges the Governor of a State shall be entitled to the use of official residence without payment of rent. He is to take oath of allegiance in a prescribed manner.

His executive power shall cover matters in regard to which the State Legislature is competent to make laws, but his executive power shall be always subject to and limited by the executive power exercisable by the Union Government by virtue of constitutional provisions or laws made by the Union Parliament. This restriction on the power of the State Governor brings him under the complete control of the Union Government. Again, the very fact that he holds his office during the pleasure of the President who appoints him will naturally compel him to obey the dictates of the President.

The new constitution makes provision for Council of Ministers but this Council of Ministers will not be the real executive in view of the fact that the Governor of the State has been associated with discretionary powers which he shall exercise unaided and unadvised by the Council of Ministers. In regard to matters other than those discretionary matters this Council of Ministers shall have the constitutional right of aiding or advising the Governor.

The Governor shall appoint the Chief Minister. He shall appoint other ministers on the advice of the Chief Minister. These ministers will hold office during his pleasure. He shall administer oaths to the ministers. The Governor shall appoint the Advocate-General and assign duties to him. He shall be paid such salaries as the Governor may be pleased to assign and shall hold office during his pleasure. Every executive action in the state shall be taken in the name of the Governor who has been empowered to make rules for the convenient transaction of the business of the Government and for allocation of business other than those left to his discretion among the ministers. This

would surely give the governor opportunity to interfere in the details of administration.

In the domain of legislation the strong grip of the Governor is easily perceptible. He shall form part and parcel of the Legislature the house or houses of which he has been empowered to summon twice at least in every year to meet at such time and place as he thinks fit. He may also prorogue the Houses and dissolve the Legislative Assembly. He may address the Legislature and send messages in regard to the bills pending in the Legislature.

The Governor of a State has been empowered to nominate one-sixth of the members of the Legislative Council so as to include persons with special or practical knowledge in Literature, Science, Art, Co-operative Movement and Social service. The Governor may appoint a person to perform the duties of Chairman or Deputy Chairman in case of vacancy of the office of the Chairman or Deputy Chairman of the Legislative Council. He may make rules in consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council for the recruitment of persons to be employed in the Secretarial Staff of the Assembly or the Council. The Governor has also been empowered to promulgate ordinances during the recess of the Legislature on his own motion and in certain cases with instruction from the President. In the Financial sphere the Governor of a State has been given ample powers. He has to lay before the Legislature a statement of the estimated receipts and expenditure in respect of each financial year showing therein the expenditure charged upon the Consolidated Fund as well as those proposed to be made out of the Consolidated Fund. The latter kind of expenditure shall be submitted in the form of demand for grants. No demand for grant shall be made except on the recommendation of the Governor. This clearly establishes the control of the Governor over state finance. The Governor may submit supplementary statement for additional or excess grants before the State Legislature.

18. The Council of Ministers: their position.

In imitation of the practice which is followed in every Parliamentary System of Government the Constitution of India makes provision for a Council of Ministers. The Chief Minister who has been placed at the helm of this Council is to be appointed by the Governor and his colleagues—the other ministers—are to be appointed by the Governor in consultation with him.

These Ministers including the Chief Minister shall hold office

during the pleasure of the Governor and shall at the same time be collectively responsible to the Legislative Assembly of the State. It is further provided that a Minister shall vacate his seat if he is not a member of the Legislature for six consecutive months. The Governor is not bound to select Ministers from the members of the party in power in the Legislature. He may even choose his nominees in the Upper House where it exists.

The Ministers thus chosen have got a two-fold responsibility. They hold their office during the pleasure of the Governor and are bound to aid and advise him in matters which do not fall within the discretionary powers.

The Chief Minister again has (i) to keep the Governor informed of all decisions relating to administration and all proposals for legislations, (ii) to furnish such information as the Governor may require and (iii) to place before the Council of Minister any decision of individual Minister on the requisition of the Governor.

Rules for the allocation of business among ministers are to be framed by the Governor.

Their collective responsibility to the Legislative Assembly means that they are in a body answerable to the Lower House for their administrative action. If this provision is strictly construed our Governors cannot claim a position higher than that of a constitutional head; but the position becomes anomalous by reasons of the fact that the Governor has been associated with discretionary functions which has not been specifically enumerated. In regard to these matters the Ministers have no right to tender aid and advice. The Governor, again, is the final authority to determine whether a particular matter falls within his discretionary powers. This will enable the Governor to carry on the administration unaided and unadvised by the Ministers and according to his sweets and pleasure and responsibility of the Ministers to the Legislature will become a myth.

Again, in states where the bicameral legislature exists the choice of the Governor falls upon nominees in the Upper House and the burden of administration will in such case eventually fall upon persons who do not represent the people.

Again, the absence of a party tie will necessarily affect the sense of solidarity and team-spirit among ministers and stand in the way of realisation of a true responsible Government in the State.

The financial control which has been vested in the Governor will make the ministers dependent upon the Governor without

whose recommendation no demand for grant can be made. Again, the financial statement of the estimates of expenditure shall be caused to be laid before the Legislature on the initiative of the Governor.

19. The State Legislature: Its Composition.

In every state there shall be a legislature consisting of the Governor and two Houses in Bihar, Bombay, Madras, Punjab, the United Provinces and West Bengal and one House in the rest of the States.

The Upper House where it shall exist shall be known as the Legislative Council and the other House shall be called the Legislative Assembly.

The Upper House shall contain a number of members not less than forty and not more than one-fourth of the total number of members in the Legislative Assembly. Of these members (i) as nearly as one-third shall be elected by the members of Municipalities, District Boards and such other local authorities as may be specified by law made by the Parliament, (ii) as nearly as one-twelfth shall be elected by the residents who are either graduates of three years' standing of any university or possess similar other qualification specified by the law of the Parliament, (iii) as nearly as one-twelfth shall be elected by the teachers of three years' standing in any educational institution not below the secondary schools within the state, (iv) as nearly as one-third shall be elected from outside by the members of the Legislative Assembly, (v) the remaining members shall be so nominated by the Governor as to represent literature, science, art, co-operative movement and social service.

The Legislative Council shall choose two members of the Council to be Chairman and Deputy-Chairman. The Legislative Council shall not be subject to dissolution but one-third of the members shall retire as soon as may be on the expiration of the second year. The Legislative Assembly shall consist of members chosen by direct election by means of territorial constituencies in such a way as to secure the representation of 75,000 of population by one member. The constituencies exempted from this rule include the autonomous districts of Assam and the constituency comprising the cantonment and Municipality of Shillong.

The members thus chosen shall not be more than five hundred or less than sixty.

The Legislative Assembly shall have an ordinary life of five years but may be dissolved earlier by the Governor. Its life may be extended for a period not exceeding one year at a time when

a proclamation of emergency is in operation. In no case however the extended period shall continue beyond six months after the proclamation has ceased to operate.

The Legislative Assembly shall choose two members to be respectively Speaker and Deputy Speaker thereof. The Speaker shall remain in office until immediately before the first meeting of the Assembly after dissolution. The Speaker or Chairman shall not vote in the first instances but shall have a casting vote in the case of a tie.

20. Qualifications of Members of the Legislature.

Membership of the State Legislature is restricted to persons who are citizens of India, at least 25 years of age in the case of Legislative Assembly and 30 years of age in the case of Legislative Council and possess such other qualifications as may be prescribed by law made by the Parliament.

21. Disqualifications of Members.

No person shall become a member of any House of the Legislature of a State if he holds any office of profit under the Government of India or State Government, is of unsound mind and becomes declared as such by a competent court, is an undischarged insolvent, and ceases to be a citizen of India.

It should be noted in this connection that the office of a Minister shall not be deemed to be an office of profit.

22. Privileges of the Members of the State Legislature.

Each member of the State Legislature shall get such salaries and allowances as may be determined by the Legislature of the State and until so determined shall get such salaries and allowances as were payable to the members immediately before the commencement of the constitution.

The members shall enjoy freedom of speech and shall not be held liable for anything said or any vote given in the Legislature. The publication of any report, paper, votes or proceedings shall not involve any liability. Other privileges will be such as may be defined by the law made by the Legislature and unless so defined will include all those privileges which are available to the members of the House of Commons in the United Kingdom.

23. Legislative Powers of the State Legislature.

Each House of the Legislature may introduce any Bill relating to matters included in the State list and in the Concurrent List as contained in the seventh schedule of the constitution. The Legislative Council is not entitled to introduce money Bills

which shall originate in the Legislative Assembly. Even in the case of public Bills other than money Bills the powers of the Legislative Council have been further curtailed by Article 197 which provides that when a Bill passed by the Legislative Assembly and transmitted to the Legislative Council stands rejected by the Council or is not passed by the Council within three months after presentation or is passed with such amendments as are not approved by the Legislative Assembly the Legislative Assembly may again pass the Bill and transmit the same to the Legislative Council. The Bill so passed for the second time and transmitted to the Legislative Council shall be deemed to have been passed by the Houses of Legislature either in its original form or with such amendment, as may be agreed to by both Houses even though the Legislative Council rejects the Bill or fails to pass the Bill within one month from the date of its presentation or passes the Bill with such amendments as are not approved by the Legislative Assembly.

The Legislative Assembly has been given wider powers than the Legislative Council. The Assembly again can introduce money Bill and pass the same. Such Bills shall no doubt be transmitted to the Legislative Council which is competent to make recommendations which the Legislative Assembly is not bound to follow. In case of refusal to accept the recommendations the money Bills shall be deemed to have been passed in the form in which it was introduced originally. The said Bill shall also be deemed to have been passed if the Legislative Council fails to return the Bill within fourteen days.

Money Bills have been defined by the constitution to include Bills, (i) imposing, abolishing, remitting, altering or regulating any tax, (ii) regulating borrowing of money by the State, (iii) concerning the custody of the Consolidated Fund of the State, the payment of money into or withdrawal of money from such fund, (iv) declaring any expenditure as a charge upon the Consolidated Fund, (v) concerning the receipt of money on account of the Consolidated Fund. Such Bills shall bear the certificate of the speaker before they are presented to the Legislative Council or the Governor.

No Bill shall become Act without the assent of the Governor. The Governor may also withhold assent in which case the Bill drops. He is bound to reserve for the consideration of the President any Bill which if passed into law will derogate from the powers of the High Court and endanger the position which the said court has been designed to fill.

A Bill so reserved cannot become law unless the President assents to the Bill.

The Governor may send the Bill for reconsideration to the House or Houses of the Legislature and may by message suggest amendments. When this is done the Bill shall be reconsidered by the House or Houses again and shall be presented to the Governor who shall not refuse to give assent to the Bill.

The President, again, may when a bill is reserved for his assent direct the Governor to return the Bill for reconsideration and the House or Houses shall have to reconsider the Bill and send the same again to the President for his consideration.

These interferences of the Executive in the domain of Legislation go to reduce the powers of the Legislative Houses and seriously affect the autonomy of the State in the matter of legislation. The control of the Union Government over State Legislation is obvious in view of the provision for reservation of Bills.

In the financial sphere the Legislative Assembly is no doubt competent to introduce bills for the raising of revenue but no such Bills shall be introduced except on the recommendation of the Governor unless the said Bills purport to reduce or abolish any tax. In the same way the power of the Legislative Assembly to vote upon the demands for grants has been restricted. No such demand for grant can be made except on the recommendation of the Governor.

24. Promulgation of Ordinances.

In addition to power of ordinary legislation extraordinary power of legislation has been vested in the Governor who has been empowered to promulgate ordinances during the recess of Legislature when he is satisfied that circumstances justify the taking of immediate action. This power of issuing ordinances is not unqualified and we find the control of the President who must be consulted in the following circumstances:—

(a) If a Bill containing the same provision cannot be introduced without the previous sanction of the President:

(b) When a Bill containing the same provision must be reserved for the consideration of the President:

(c) When the Act containing the provisions would become invalid unless assented to by the President.

The ordinances promulgated by the Governor shall have the force and effect of law until the expiration of six weeks from the re-assembly of the Legislature to which these ordinances must be placed. Such ordinances may be disapproved by the Legislature by means of a resolution and may be withdrawn at any time by the Governor.

This power of making ordinances is limited to matters in regard to which the State Legislature is competent to enact laws.

25. The State Judiciary: High Courts: Subordinate Courts.

In any state there shall be a High Court which shall consist of a Chief Justice and such other judges as the President may deem it necessary to appoint. The existing High Courts will be maintained under the provisions of the new Constitution.

The President has been empowered to appoint the judges of the High Court by warrant, under his hand and seal. In doing so he has got to consult with the Chief Justice of India and the Governor of State. While appointing judges other than the Chief Justice he has to consult the Chief Justice of the High Court.

Every judge of the High Court shall hold his office until he attains the age of sixty years. He may be removed from office by an order of the President passed on an address by each House of the Parliament supported by a majority of the House as well as by a majority of not less than two-thirds of the members of the House present and voting.

The following qualifications must be possessed by a person who may be appointed as a judge of the High Court :—

He must be a citizen of India and must have held a judicial office in the territory of India for at least ten years or have been an advocate of any High Court for the same period.

Every judge shall get salary at the rate of Rs. 3,500 per mensem in respect of time spent in actual service. The Chief Justice shall get Rs. 4,000 per mensem. Every Judge shall get such allowances as will go to re-imburse him for expenses incurred in travelling on duty within the territory of India until such allowances have been fixed by law made by the Parliament.

The High Courts will continue to enjoy the existing jurisdiction in so far as they are not inconsistent with the provision of the constitution or any law made by the appropriate Legislature. These High Courts will have no control over any court of tribunal set up under any law relating to the Armed Force.

The High Courts have been empowered to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari upon person or authority within their respective territories.

Every High Court shall be a court of record and shall have all the powers of such a court. The jurisdiction of the High Court may be extended by the Parliament in the same way as it may be reduced by the same authority.

26. Subordinate Courts.

In every District there shall be a District Court with the District Judge at the helm. The District Judge shall be appointed by the Governor in consultation with the High Court. A person shall be qualified to be so appointed if he has been an advocate or pleader of not less than seven years' standing. The posting and promotion of the District Judge are to be made by the Governor in consultation with the High Court.

Other judges in the Judicial service shall be appointed by the Governor after consultation with the State Public Service Commission and the High Court. The High Court shall have control over these judges in the matter of their posting and promotion.

27. Administration of States in Part B of the First Schedule.

The Administration of the States included in Part B of the First Schedule differs from that of the States included in Part A in certain respects. The Governor of such a State will be known as Raj Pramukh. This Raj Pramukh does not owe his appointment to the President of the Union nor does he hold his office during the President's pleasure. He shall be entitled without payment of rent to an official house in the principal seat of the Government of the State only when he does not himself own such a residence. In the State of Madhya Bharat there shall be a Minister-in-charge of tribal welfare who may in addition be in charge of the welfare of the Schedule castes and backward classes.

In the Legislature we find that Raj Pramukh fills up the place of the Governor. The only State which has a bicameral legislature is Mysore. Other States have only one House. In the absence of legislative provision the salary and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and the Chairman and the Deputy Chairman of the Legislative Council shall be such as the Raj Pramukh may determine. Similarly, in the absence of legislative provisions the salaries and allowances of the members of the Legislative Council shall be determined by Raj Pramukh. The allowances of Raj Pramukh and other expenditure relating to his office shall be determined by the President by general or special order. They will be a charge upon the Consolidated Fund. In the State of Travancore-Cochin the sum of fifty-one lakhs of rupees shall be paid annually to the Devaswam Fund and shall be a charge upon the Consolidated Fund.

The rules of procedure and conduct of business shall be framed by the State Legislature but until these rules are framed the rules of procedure and standing orders as may be specified by Raj Pramukh shall prevail subject to such modification as may be

made by the Speaker of the Legislative Assembly or the Chairman of the Legislative Council. The judges of the High Court shall be appointed by the President after consultation with the Raj Pramukh. In the absence of provision made by the Parliament allowances and salaries of the judges shall be such as may be determined by the President after consultation with the Raj Pramukh. Subject to the aforesaid modifications the administration of the State in Part B is roughly identical with the administration prescribed for States included in Part A of the First Schedule.

28. Administration of States in Part C of the First Schedule.

These States shall be administered by the President acting through Chief Commissioners or Lieutenant-Governor to be appointed by him. Administration may also be carried on through the Government of a neighbouring State after consultation with that Government if the people of the State to be administered do not object to this mode of administration.

The Legislature of such a State may be constituted by the Parliament of the Union. The existing legislature may be allowed to function or a new body consisting of nominated, elected or partly nominated and partly elected members may be created by the Parliament. In the absence of such a body a council of advisers or Ministers may be created or continued and allowed to function as a legislature.

A new High Court may be set up by law made by the Union Parliament in this behalf or any existing court may be given the status of a High Court and authorised to function as such.

The Croog Legislative Council shall continue to function as it did before the commencement of the constitution until the Union Parliament affects its jurisdiction by law. The existing arrangement for the collection and expenditure of revenue in Croog shall also continue until provision is made by the Union Parliament for altering that arrangement.

29. Administration of territories in Part D and other territories not so specified.

These territories shall be administered by the President acting, to such extent as he thinks fit, through Chief Commissioners or other authority to be appointed by him.

Regulations may be made by the President for the peace and good government of these territories. These regulations will go so far as to amend or repeal any law made by the Parliament of the Union or any existing law.

The President may in the administration of these territories assume the role of a dictator. He is the main spring from which executive orders and legislative measures emanate. The Chief Commissioner is merely an agent of the President and representative institutions will be unknown to the people of these territories.

30. Administration of the Scheduled and Tribal areas.

There exist scheduled areas in Part A, Part B and Part C of the First Schedule.

The Executive power over these areas included in States mentioned in Part A or Part B of the First Schedule shall be exercised by the Government of the States concerned. The Governor or Raj Pramukh of the State which is thus authorised to exercise executive power over the scheduled areas lying within its ambit shall be bound to submit an annual report to the President regarding the administration of the scheduled areas.

The Union Government shall have every right to issue direction as to the manner in which these areas shall be administered. Provision has been made in the constitution for setting up a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be representatives of the scheduled tribes in the Legislative Assembly of the State which undertakes the administration of the scheduled areas.

The Advisory Council shall be entitled to advise on such matters as may be referred to it by the Governor or Raj Pramukh concerned. The matter so referred shall relate to the welfare and advancement of the Scheduled Tribes.

The rules prescribing the number of members of the Council, the mode of their appointment as well as the appointment of the Chairman of the Council and the officers and servants thereof shall be made by the Governor or Rajpramukh concerned. The procedure for the conduct of the meetings shall be made in the same way.

The Governor or Rajpramukh shall determine and direct by notification the application of any law of the Union or the State Legislature in respect of any tribal areas. He shall also make regulation for the peace and good government of any scheduled area within the State. These regulations may impose restriction on the transfer and allotment of land within scheduled areas and on the carrying on of money-lending business. These regulations may override the Act of the Parliament or of the State Legislature or of any existing law.

These Regulations must be assented to by the President in order that they may have any effect.

A brief review of the aforesaid provisions in regard to scheduled areas makes it quite clear that the President of the Union is the real administrator of the areas and the Union Parliament has no voice therein. It is the President of Union who is alone competent to declare certain areas as scheduled areas and to define and alter its boundaries. The Tribal Advisory Council in a State containing scheduled areas shall be set up according to his direction. Regulation made by the Governor or the Rajpramukh shall become invalid unless they are assented to by the President.

31. Administration of Tribal areas in the State of Assam.

The tribal areas as specified in Part A and Part B of paragraph 20 shall include the United Khasia—Jaintia Hill District, The Garo Hills District, the Lushai Hills District, the Naga Hills District, the North Cachar Hills, the Mikir Hills, the North East Frontier tract and the Naga Tribal area. These areas with the exception of the last two areas shall be considered as autonomous districts.

The Governor may by notification create new autonomous districts, define and alter the existing boundaries of such districts or divide any one of such districts into autonomous regions.

Representative institutions shall be set up in each of the autonomous districts by establishing a District Council consisting of not more than 24 members of whom at least three-fourths shall be elected on the basis of adult suffrage.

In each autonomous region there shall be a Regional Council constituted in the same way.

Each such District Council or Regional Council shall be a body corporate having perpetual succession and common seal.

Each of these Councils shall be given charge of the administration of their respective areas. The regional councils, where they exist, may delegate certain powers to the District Council.

The composition of the District and the Regional Councils, allocation of seats therein, the delimitation of the constituencies, the qualifications for voting, the term of office of the members of such council, the appointment of officers and staffs shall be determined by means of rules made by the Governor in consultation with the existing tribal councils.

After the First Council has been established the rule-making power shall vest in the District or Regional Council.

These District or Regional Councils have been empowered to make laws regulating (i) the allotment, occupation or use of land for agriculture, grazing, residential or other purposes without dis-

turbing the right of the Government of Assam for acquiring land for public purposes, (ii) the management of forests other than Reserved Forests, (iii) the use of any canal or water course, (iv) the practice of jhum or other forms of shifting cultivation, (v) the establishment of village or town committees, (vi) Police, Public Health and sanitation, (vii) the appointment and successions of Chiefs or Headmen, (viii) Inheritance of property, (ix) marriage and (x) social customs.

Village councils or courts shall be established under the direction of the District or Regional Councils for deciding disputes between parties belonging to the scheduled territory. An appeal shall lie to the District or the Regional Council as the case may be from the decision of these courts unless a separate court has been constituted to hear such appeals. Power may be conferred on the High Court of Assam by the Governor to assume such jurisdiction over these courts as the Governor may be order specify ; certain more important and serious cases involving the operation of any law in force in an autonomous Districts or Regions and involving such punishment for a term of not less than five years under the Indian Penal Code must be tried by the District or the Regional Councils or by any court set up by such councils or by an officer appointed by the Governor. The powers exercisable under the Civil Procedure Code or the Code of Criminal Procedure may be conferred by the Governor on the aforesaid court or officer.

The District Councils have been associated with many other powers relating to primary education, regulation and control of money lending and trading and the assessment and collection of revenue. An act or resolution of the District or Regional Council may be annulled or superseded by the Governor when he is satisfied that the said act or resolution endangers the safety of India. In such contingency the Governor may even assume to himself all the powers of the District and Regional Councils.

The Governor, again, may dissolve such council on the recommendation of Commission appointed by him to enquire and report on the administration of autonomous District.

The Transitional provisions authorise the Governor to administer the Tribal areas until the constitution of the District or Regional Council. In administering these areas during the period of transition the Governor may choose to apply by notification an act of the Union Parliament or of the State Legislature with such modification as he pleases. The Governor may also make regulation for the peace and good government of such area and these regulations may even override the provisions of an Act of the Union Parliament or of the State Legislature.

32. Legislative Lists.

The constitution of India contains in its Seventh Schedule three lists. List I contains subjects in regard to which the Union Legislature is alone competent to make laws. This list is known as the Union List and contains subjects like (i) Defence, (ii) Naval, Military and Air Force, (iii) Arms, (iv) Atomic Energy, (v) Industries connected with Defence and prosecution of war, (vi) Foreign affairs, (vii) Diplomatic representation, (viii) United Nations Organisations (ix) War and peace, (x) Foreign Jurisdiction, (xi) Railways, (xii) Airways, (xiii) Ports, (xiv) Posts and Telegraphs, (xv) Public Debt, (xvi) Currency and Coinage, (xvii) Reserve Bank of India and similar other subjects of common concern.

List II which is known as the State list includes (i) Public order, (ii) Police, (iii) Administration of justice, (iv) Prisons, (v) Local Government, (vi) Public Health and Sanitation, (vii) Pilgrimages, (viii) Cremation, (ix) Education, (x) Libraries, (xi) Communications, (xii) Agriculture, (xiii) Forests, (xiv) Fisheries. In these matters the State Legislature will have jurisdiction to make laws.

The Concurrent List contains subjects in respect of which the Union Parliament and the State Legislature will be equally competent to make laws. This list includes subjects like Criminal Law, Criminal Procedure, Marriage and Divorce, Transfer of Property, Evidence and Oaths, Trade Union, Social Security, Legal, Medical and other professions, Price control, Factories.

33. Legislative Relations.

In the domain of legislation we find that the Union Parliament and the State Legislatures have been given definite jurisdictions in respect of matters enumerated in the Union List and State Lists respectively. The Union Legislature has exclusive right to make laws relating to matters included in List I and concurrent jurisdiction to make laws in respect of matters included in the Concurrent List.

The Union Parliament may legislate on matters included in the State List when a resolution of the Council of State supported by not less than two-thirds of the members present and voting declare the desirability of passing such laws in the national interest. The law made by the Union Parliament in pursuance of the Resolution shall cease to have effect on the expiration of six months after the resolution has ceased to be in force; such resolution will remain in force for a period not exceeding one year and may extend to further period of one year if a resolution is passed

for the continuance of the previous resolution. The Union Parliament has also been empowered to legislate with respect to any matter in the State list if a Proclamation of Emergency is in operation; such law also will cease to operate on the expiration of six months after the proclamation has ceased to be operative.

The Union Parliament shall be entitled to legislate on State matters when the Legislatures of two or more States express their desire to that effect by means of resolutions passed by all the Houses of the Legislatures of those States.

The Union Parliament has also been empowered to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country. In the sphere of legislation concerning matters included in the Concurrent List if any provision of the Law made by the State Legislature is repugnant to any law made by the Parliament or to the existing law the Law of the State Legislature shall to the extent of repugnancy be void. But such law of the State Legislature, when reserved for the consideration of the President and assented to by him, shall prevail in that State notwithstanding that the said law is repugnant to the provisions of an earlier law made by Parliament or any existing law relating to the same matter.

34. Administrative Relation between the Union and the State.

The Constitution of India contains in chapter II of Part XI certain provisions which prove the intimacy between the executive of the Union and that of the State and the rigidity of control which the Union Government will have over the State government. Every State shall exercise its executive power in a manner which does not impede the exercise of the Executive power by the Union. The Executive power of the State shall be exercised in such a way as ensures the compliance with the laws made by Parliament and any existing law which applies in that State.

The Union Executive has also been empowered to give such directions to the States as may appear to the Government of India to be necessary for enforcing compliance of such laws and for preventing encroachment on the executive power of the Union.

The executive of the Union may give direction to the States in the matter of construction and maintenance of means of communications which may be declared to be of national importance. It may also extend to the giving of directions to the States in regard to measures to be taken for the protection of railways within the State. The Executive of the Union shall pay extra cost incurred in giving effect to its direction.

The President of the Union may confer on the State Executive certain executive powers which fall within the domain of the Executive of the Union ; when these powers are conferred on the State Executive the Union Government shall pay the cost involved in performing those functions.

The States mentioned in Part B of Schedule I shall continue to maintain the existing Armed Forces under the general or special orders of the President. The Forces so maintained shall form part of the Armed Forces of the Union.

35. Distribution of Revenues between the Union and the States.

In the sphere of Finance the Union Government and the State Government have been given roughly independent sources of revenue; but this independence is not noticeable in the imposition and collection of revenue. Certain duties are to be levied by the Government of the Union while the collection of these duties has been left with the States other than those included in Part C of the First schedule. In the case of States included in Part C of the first schedule these duties are to be collected by the Government of India.

These duties include stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List. The duties so collected shall be carried to the consolidated fund of the States.

Again, there are duties which shall be both levied and collected by the Union Government but their proceeds shall be assigned to the States. These include (a) Duties in respect of succession to property other than agricultural land, (b) Estate duty in respect of property other than agricultural land, (c) terminal taxes on goods and passengers carried by Railways, sea or air, (d) taxes on railway fares and freights, (e) taxes other than stamp duties on transaction in stock exchanges and future markets, (f) taxes on the sale or purchase of newspapers and on advertisements published therein.

The net proceeds shall be distributed among the States according to the principle of distribution to be specified by law of the Union Parliament.

Taxes on income other than agricultural income shall be levied and collected by the Union Government but a prescribed percentage of the net proceeds of such tax after deducting the net proceeds attributable to states specified in Part C of the First Schedule or to taxes levied on Union emoluments shall be assigned to States and distributed among them in a prescribed manner.

The percentage is to be prescribed by the order of the President after due consideration of the recommendation of the Finance Commission, if any.

Surcharges imposed upon the above taxes for the Union purposes shall be appropriated by the Union and carried to the Consolidated Fund.

Union Excise duties other than those on medicinal and toilet preparations shall be levied and collected by the Union Government but either the whole or such portion of it as may be prescribed by law of the Parliament shall be distributed among the States.

A prescribed amount of money shall be charged upon the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal in lieu of assignment of any share of the net proceeds of export duty on jute products. Grants-in-aid may also be made out of the Consolidated Fund of India to such States as the Parliament may determine to be in need of assistance.

A review of the financial provision confirms the rigidity of control of the Union Government over State finance. All major taxes are to be levied and collected by the Union Government. The principle of distribution among the States shall be formulated by the Union Parliament. The percentage of the net proceeds of the Income Tax to be available for distribution among States are to be prescribed by the President who may consider the recommendation of the Finance Commission appointed by him. Grants-in-aid in lieu of export duty on jute and jute products shall be prescribed by the President. Again, prior recommendation of the President is required in respect of introduction in either House of Parliament of bills affecting the taxation in which the States are interested. Grants-in-aid which the Parliament may deem necessary in order to aid certain States including the State of Assam in the matter of meeting costs of schemes of development shall be prescribed by the Union Parliament or by the President of the Union. The Union Parliament shall be entitled to regulate imposition of taxes on professions, trades and callings and employments by the Legislature of the State. The President has also been empowered to terminate or modify agreements entered into with States included in Part B of the First Schedule in respect of the levy and collection of taxes therein after the expiration of five years from the commencement or the said agreements.

36. Finance Commission.

A Finance Commission shall be set up with a chairman and four other members to be appointed by the President. This should

be done within two years from the commencement of the constitution.

The qualifications of the members of the Commission shall be such as the Union Parliament may determine.

The duty of the Commission will be to make recommendations to the President in respect of (i) distribution of net proceeds of the taxes which are to be or may be divided between the Union and the States, (ii) the principle governing the grants-in-aid to the States, (iii) the continuance and modification of the terms of agreement between the Government of India and the States specified in Part B of the First Schedule and (iv) such other matters referred to the Commission by the President.

37. Borrowing by the Union Government and the State Government.

The executive of the Union may borrow money on the security of the Consolidated Fund of India within the limit fixed by Parliament by law. The power of guaranteeing loans has been restricted in the same way.

The executive of each State shall enjoy the same privilege of borrowing and guaranteeing loans within the limits fixed by the State Legislature.

The Union Government may grant loans to the States or give guarantees in respect of loans incurred by any State under such conditions as the Union Parliament may choose to impose by law. The loans granted in favour of any State shall be a charge upon the Consolidated Fund of India.

So long as the loans granted in favour of any State by the Union Government remains outstanding the consent of the Union Government is to be taken by the State if the latter wants to raise fresh loans or wants guarantee in respect of such loans.

38. Suit by and against the Union and the States.

Suits may be brought against the Union Government or the States in respect of their respective affairs in the same way and in like cases as the Dominion of India or the corresponding provinces or the corresponding Indian States may be sued. In the case of the Union of India the suits must be brought against the said Union. In the same way suit will be against any State in the name of such State. The Union of India and the States of the Union may sue in their respective names. The Union Parliament and the State Legislature may make laws in modification of this arrangement.

In the pending proceedings in which the Dominion of India, a province or an Indian State is a party the name of the Union of India, or the corresponding State shall be deemed to be substituted.

39. Provisions relating to Internal Trade, Commerce and Intercourse.

Subject to the right of the Union Parliament to impose restriction by means of law there will be freedom of trade, commerce and intercourse throughout the territory of India. The Legislatures of the Indian Union and of the States shall have no power to make any law with a view to giving or authorising the giving of any preference to any State as against others in the sphere of trade and commerce even though these subjects find place in their respective lists of legislative power. The power of making discrimination or authorising the making of discrimination has also been taken away. The Union Parliament may, however, give such preference or make such discrimination by means of law when it is deemed necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

The Parliament of the Union may by means of law impose restriction on the free movement of goods from one State to another or within any part of the territory of India when such restriction becomes necessary for the promotion of public interest. For the self same reasons the State Legislatures may impose restriction on the freedom of trade, commerce or intercourse but the bill incorporating such restriction must be introduced with the previous sanction of the President. The State Legislature may by means of law impose taxes on goods imported from other States when the similar goods manufactured and produced in that State are subject to taxation.

The existing export and import duties levied by the States included in Part B of the First Schedule shall continue if the States concerned enter into an agreement with the Government of India for the continuance of such duties for a period not exceeding ten years from the commencement of the constitution.

40. Services under the Union and the States.

Regulations of services of the Union and of the States are subject to the provisions of the constitution and of the Acts of the respective Legislatures. In the absence of such constitutional and statutory provisions rules regulating the services of the Union may be made by the President of the Union and those relating to services of the States may be made by the State Legislatures.

Every member of the Defence Service or of the Civil Service of the Union shall hold office during the pleasure of the President. In the same way every member of the Civil Service of the State shall hold office during the pleasure of the Governor or the Rajpramukh of the State but this provision shall not affect the term of contract which embodies stipulations for the payment of compensation in case of dismissal before the expiration of the agreed period.

A member of a civil service of the Union or an All-India service or a civil service of a State shall not be dismissed by an authority subordinate to that by which he was appointed and until he has been given reasonable opportunity of showing cause. This opportunity for showing cause shall not be given when the officer concerned has a criminal conviction to his credit or when the authority empowered to dismiss him is satisfied that it is not reasonably practicable to give such opportunity or when the President or the Governor or the Rajpramukh is satisfied that for the sake of security of the State it is not expedient to give such opportunity. Until the enactment of new laws according to the provisions of this constitution all existing laws applicable to any public service shall continue in so far as they are consistent with the constitutional provisions.

The existing terms and conditions of service of persons who owe their appointment to the Secretary of State or Secretary of State in Council and continue to serve under the Government of India and the Government of the State will continue except in so far as they are not specifically provided for by this constitution.

41. Public Service Commission.

There shall be a Public Service Commission for the Union and a Public Service Commission for each State. A joint Public Service Commission for a number of States shall exist only when the Legislatures of each of such States pass a resolution to that effect.

The provisions for the appointment of a Joint Public Service Commission may be incorporated in an Act of the Parliament.

The Public Service Commission for the Union may agree to serve any State when requested to do so by the Governor or Rajpramukh concerned.

The Chairman or other members of a Public Service Commission shall be appointed by the President when such appointment relates to a Union Commission or Joint Commission. In case of State Public Service Commission such appointment shall be made by the Governor or Rajpramukh of the State. One-half of these

members shall be persons who at the date of their respective appointments have held office for at least ten years under the Government of India or under the Government of the State. A member of a Public Service Commission shall hold office for a term of six years or until he attains the age of sixty-five years; in the case of a State Commission such members may be removed by the President on the ground of misbehaviour when the Supreme Court on reference being made to it reports in favour of such removal. Such removal is competent when the member concerned is adjudged an insolvent, or engages himself in any paid employment or is in the opinion of the President unfit to continue in office.

The condition of service of the members of Union Commission or of a Joint Commission shall be determined by regulation made by the President. In the same way the Governor or the Rajpramukh may make regulation concerning the condition of service of the members of the State Commission.

The function of the Public Service Commission shall consist in holding examinations for appointments to the services of the Union. The Union Public Service Commission may at the request of two or more States assist them in framing and operating schemes of joint recruitment for any services employing candidates possessing special qualifications.

These Commissions shall be consulted in the method of recruitment to civil services, on the principle to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another, on disciplinary matters and on any claim for costs of litigation incurred by him in defending legal proceeding instituted against him and on any claim for the award of a pension in respect of injuries sustained by a person in course of his service under the Government of India or of the State.

42. Elections.

The preparation of the electoral rolls for and the conduct of all election to the Union Parliament and to the Legislature of every State and of election to the offices of the President and the Vice-President shall be placed under the control, direction and superintendence of the Election Commission consisting of the Chief Election Commissioner and a member of Election Commissioners to be appointed by the President under the provisions of any law made by the Parliament.

Regional Commissioners may also be appointed by the President so that they may assist the Election Commission in the performance of function assigned to such Commission.

Every territorial constituency shall maintain one general Electoral Roll which shall make no discrimination on the ground of Religion, caste, race, sex or any of them.

Adult suffrage shall form the basis of every election. Every person shall be entitled to be registered as voter if he possesses the following qualifications :—(a) He is a citizen of India, (b) He is not less than 21 years of age, (c) He is not otherwise disqualified on the ground of non-residence, unsoundness of mind, commission of crime or corrupt or illegal practices.

The Union Parliament is competent to make laws relating to election to either House of Parliament or either House of the State Legislature.

Subject to the laws made by the Union Parliament the State Legislatures will be competent to make laws in connection with the election to either House of the Legislature.

43. Special Provisions relating to certain classes.

The constitution recognises fully the claim to representation of certain classes including the Scheduled Castes, the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam and the Scheduled Tribes in the autonomous district of Assam.

Certain seats shall be reserved in the House of the People for the representatives of the Scheduled Castes or the Scheduled Tribes in proportion to their numerical strength.

The President may nominate not more than two members to the House of People if he is of opinion that the Anglo-Indian community has not been properly represented.

Certain seats shall be reserved for the Scheduled Tribes and Castes in the Legislative Assembly of every State included in Part A and Part B of the First Schedule. There shall also be reservation of seats for ensuring representation of the autonomous districts in the Legislative Assembly of the State of Assam in proportion to their numerical strength.

The Governor or the Rajpramukh may make nomination to ensure the representation of the Anglo-Indian community in the State Legislature.

In making appointments to the services and posts under the Union Government or the State Government the claims of the Scheduled Castes or Scheduled Tribes shall receive sympathetic consideration consistently with the maintenance of efficiency of administration.

Special provision with respect to educational grants for the benefit of Anglo-Indian community shall continue for a period of three years after the commencement of the constitution.

There shall be special officer for Scheduled Castes and Scheduled Tribes. Such officer shall be appointed by the President. He shall be empowered to investigate all matters relating to safeguards provided for the Scheduled Castes and Scheduled Tribes.

44. Official Language.

The official language of the Union shall be Hindi in Devanagari script; but the English language shall continue to be used for all official purposes of the Union for a period of fifteen years from the commencement of the constitution.

The continuance of the use of English language for specified purposes even after the aforesaid period of fifteen years may be authorised by law made by the Parliament of the Union. The Legislature of any State may adopt by law any one or more of the languages in use in the State or Hindi as the language or languages to be used for official purposes of the State. In this way various languages in use in different States will get a chance of support within the States. The English language shall be used in the Supreme Court and in the High Court and in all Bills and Acts until the Parliament by law otherwise directs. The Governor or Rajpramukh of a State may with the previous consent of the President direct that Hindi language or any other language should be used for any official purposes of the State in proceedings in the High Court having its principal seat in that State.

45. Emergency Provisions.

Proclamation of Emergency may be made by the President whenever he is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened by war, external aggression or internal disturbance. Any such proclamation is to be laid before each House of Parliament and shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by the resolutions of both Houses of Parliament. Such Proclamation may be revoked by a subsequent Proclamation. During the operation of the Proclamation of Emergency the Executive power of the Union Government shall have full control over the affairs of the State and shall be entitled to regulate the activities of the States by issuing direction to any State as to the manner in which the State concerned shall exercise its Executive power. The

Union Parliament shall then be entitled to make laws in regard to matters not included in the Union list. The President shall assume full control over the Financial matters and may direct that provisions relating to the distribution of revenue shall apply subject to such exceptions or modifications as he may think fit. These financial orders of the President shall be laid before the Parliament as soon as may be after they are made. The President when he is satisfied that the Government of a State cannot be carried on according to constitutional provisions may assume to himself all or any of the functions of the Governor of the State and all or any of the powers vested in or exercisable by the Governor or Rajpramukh or in any other body or authority in the State other than the Legislature of the State. He may also direct that the powers of the Legislature of the State shall be exercised under the strict control or authority of the Union Parliament. He may also suspend in whole or in part the operation of any provisions of the constitution relating to any body or authority in the State. Even during the proclamation of Emergency the President is not competent to assume to himself any of the powers vested in any High Court. The Union Parliament shall during the pendency of such proclamation be competent to confer on the President the power of the Legislature of the State to make laws. During the operation of the Proclamation of Emergency the President may cause suspension of the enforcement of rights conferred by Part III of this Constitution.

The President may by Proclamation declare a financial emergency when he is satisfied that a situation has arisen whereby the financial stability or credit of India or any part of the territory thereof is threatened. During the operation of Financial Emergency the Executive of the Union is competent to issue direction to any State as to the observance of such canons of financial propriety as may be specified in the direction. Such direction may extend to any provision for reduction of salaries and allowances of all or any class of persons serving in the State.

46. Immunities and Privileges of the President, Governor or Rajpramukh.

The Constitution of India enumerates certain immunities to be enjoyed by the President, Governors or Rajpramukhs. They are immune from the jurisdiction of any court for anything done in the exercise and performance of powers and duties of their respective offices. The aggrieved person may bring appropriate actions against the Government of the Union or the Government of the State.

It should be noted in this connection that a special court,

tribunal or body may be appointed by either House of Parliament for the investigation of any charge brought against the President.

No criminal action shall be brought against the President, Governor or Rajpramukh during the term of his office.

Nor should any process for arrest or imprisonment be issued against the President, the Governor or Rajpramukh.

No civil action lies against the President, the Governor or Rajpramukh for anything done by him in his personal capacity either before or after he entered the office until after prescribed notice.

Rights, privileges and dignities of Rulers of States incorporated in covenants or agreement referred to in Article 291 shall receive careful consideration before any law is made by the Union Parliament or the State Legislature touching those rights and privileges.

47. Amendment of the Constitution.

The Constitution of India cannot be amended by the ordinary method of making laws. A slightly differently procedure is to be adopted for the amendment of the Constitution. The proposed amendment must be introduced in either House of the Parliament in the form of a Bill. When the Bill has won the approval of a majority of a total members of each House and the support of not less than two-thirds of the members of each House present and voting it shall be presented to the President for assent. If the Bill is fortunate in getting such assent the amendment finds its due place in the Statute.

If, again, the amendment relates to any provisions incorporated in Article 54, Article 55, Article 73, Article 162 or Article 241, Chapter IV of Part V, Chapter V of Part VI or Chapter I of Part XI or any of the Lists in the Seventh Schedule or the representation of the States in Parliament or the provision of Article 368 the amendment before it is presented to the President must also be ratified by resolutions passed by the Legislatures of not less than one-half of the States specified in Parts A and B of the First Schedule.

48. Temporary and Transitional Provisions.

The Constitution of India incorporates in Part XXI certain temporary and transitional provisions. One such provision authorizes the Parliament of the Union to make during the period of five years from the commencement of this constitution, laws relating to certain matters like trade and commerce, distribution of cotton and woollen textiles as if they were enumerated in the Concurrent List.

Another provision makes Article 238 which deals with States in Part B of the First Schedule inapplicable in relation of the State of Jammu and Kashmir and imposes restriction on the Power of the Parliament to make laws relating to the said State.

Another provision places the Government of every State specified in Part B of the First Schedule under the general control of the President during the period of ten years from the commencement of the constitution. Another provision authorises the continuance in force of the existing laws and their adaptations until they are altered or repealed or amended by a competent Legislature.

Another provision authorises the Judges of the Federal Court holding office immediately before the commencement of the constitution to become the Judges of the Supreme Court and at the same time authorizes the transfer of all suits, appeals and proceedings pending there to the file of the Supreme Court.

Another provision authorises the continuance of all Courts of Civil, Criminal and revenue jurisdiction and the continuance in office of all officers, judicial, executive and ministerial.

Another provision authorises the functioning of the Constituent Assembly as the Provisional Parliament until both Houses of Parliament have been duly summoned to meet for the first session. This Constituent Assembly may include members chosen to represent any State or other territory according to rules made by the President in this behalf.

Until the election of the President in accordance with the provision of the constitution the Constituent Assembly of the Dominion of India shall elect a person to be the President of India.

Until the President of India appoints the ministers of the Council of Ministers under this constitution all persons holding office as ministers of the Dominion of India shall continue to hold office as the members of the Council of Ministers of the President.

The existing Legislatures of the Province shall exercise the powers of the Legislatures of the corresponding States—until the House or Houses of the Legislature has or have been constituted and summoned to meet for the first session.

Until the appointment of a new Governor in accordance with the constitutional provisions the existing Governors of the Provinces shall become the Governor of the corresponding State. Similarly the existing ministers shall continue in office unless and until the Council of Ministers is appointed in their place.

The existing Provincial Legislature shall continue and perform their functions until the new Legislature has been constituted and summoned to meet for the first session. The existing Council of Ministers in States included in Part B of the First Schedule shall continue.

49. Commencement of the Constitution: Repeal of Acts.

The Constitution of India in so far as it contains provisions incorporated in Articles 5, 7, 8, 9, 60, 324, 366 367, 379, 380, 381, 391, 392 and 393 of the said constitution will come into force at once while other provisions will come into force on the 26th day of January, 1950.

This constitution repeals the Indian Independence Act, 1947 and the Government of India Act, 1935. The Amending Acts other than the Abolition of Privy Council Jurisdiction Act of 1947 are also repealed.

COMPARATIVE AND CRITICAL ESTIMATE OF THE NEW CONSTITUTION

1. The Indian Constitution as compared with the English Constitution.

The New Constitution of the Indian Republic is like the Constitution of Great Britain founded on democratic principle. It is no doubt true that we have an elected President and our constitution is republican in character but the form of Government is Parliamentary in view of the fact that the Council of Ministers has been made responsible to the Legislature (the lower House) both in the Union Government and in the State Governments. The President in India is expected to occupy the rank and position of a Constitutional Monarch like that of the British King. The constitution however does not state anywhere that our President must abide by the advice of the Council of Ministers. The gap is to be bridged by convention as in Great Britain which recognizes the veto power of the King in the domain of legislation—a power which by the growth of convention has become obsolete. In the executive sphere in Great Britain we find that His Majesty's name is associated with every action of the Government but in fact all executive actions are done by the Cabinet uninterrupted by the King who remains an ornamental figurehead. In English Constitution we do not find any provision which compels the King to abide by the decision of the Cabinet. Nevertheless the king is by convention bound to behave in that way in order to ensure the peaceful operation of responsibility of the Cabinet to the House of Commons. Our Constitution has followed the English Constitution in this respect and the responsible form of Government as envisaged by the New Constitution will be a myth if our president does not follow the conventional practice of being guided by the advice of the Cabinet or the Council of Minister in the discharge of his constitutional powers.

Another point of similarity between the English and the Indian Constitution is the establishment of the Rule of Law. This Rule of Law as it is understood in Great Britain means that no person is above law and no person shall be deprived of his life, liberty or property except for a breach of law proved and established in ordinary Court. The Indian Constitution has enunciated this rule of Law and we find in Article 21 a provision to the effect that no person shall be deprived of his life or personal liberty except according to the procedure established by Law. In

the same way Article 31 provides that no person shall be deprived of his property except according to Law.

This enunciation of the Rule of Law is founded upon British model which recognises the sovereignty of the Parliament and does not allow the Judiciary to go behind the law. The British Parliament has unlimited jurisdiction to make any law and the Courts have no authority to decide upon the constitutionality or unconstitutionality of laws made by the Parliament.

If the Parliament chooses to make any Law which authorises the executive to detain persons indefinitely without trial the British Judiciary is incompetent to bring the person so detained before it for trial. The Rule of Law must in such cases fail to guarantee the rights and liberty of the citizens. The Rule of Law as established in U.S.A. is more complete in view of the fact the Courts in U.S.A. are competent to decide the constitutionality of the Legislative Acts when they are called upon to decide cases of encroachment on individual liberty. In the American Constitution the relevant provision runs thus: "No person shall be deprived of his life, liberty or property without due process of law" and the Supreme Court has interpreted the expression "without due process of law" in a manner which gives the Courts jurisdiction to examine both the law and the procedure. They can declare the law invalid on the ground that the constitution does not authorise such invasion of the personal liberty.

In India the use of the expression "except according to the procedure established by law" will necessarily give the Courts limited jurisdiction to examine only the procedure and to see whether the strictly legal procedure has been followed. If the Legislature has enacted law which authorises to keep certain criminals in custody without trial our courts will be absolutely incompetent to provide any remedy to the aggrieved person. It is interesting to note in this connection that the authors of our constitution has followed the provision of the Japanese Constitution in this respect.

It should be also noted in this connection that the aggrieved person has the constitutional remedy to move the Supreme Court for the enforcement of the fundamental rights enumerated in Part III of the constitution. In providing for such remedy the said Supreme Court has been associated with power to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition quo warranto and certiorari. When such constitutional remedies are sought for the Supreme Court will no doubt be competent to pronounce upon the validity of law in view of the provision of Article 13 which makes all

existing laws which are inconsistent with the fundamental rights void and inoperative and takes away the right of the Union and State Legislatures to make any law in contravention of the fundamental rights, but these fundamental rights have not been happily defined in view of the fact that the Constitution authorises the Legislature to make any law touching individual liberty and the Court will have no right to provide any remedy to the aggrieved person when he is detained indefinitely without trial and a strictly legal procedure has been followed in such detention.

Another point which deserves notice in this connection is that the rule of law in Great Britain is more exhaustive in as much as it finds support in numerous judicial decisions. These fundamental rights need not invoke the authority of any formal enactment which proclaim them. The Magna Carta and other great constitutional documents merely declare the existing Common Law on the point. In the Indian Constitution the rights of personal liberty have to be traced to laws which will remain valid in so far as they are not inconsistent with the provisions of Part III of the New Constitution and have more particularly to be determined with reference to provisions incorporated in Articles 21, 22 and 31 of the New Constitution. The Judicial decisions which have already defined such rights find no recognition in the New Constitution. This is clear if we examine the definition of law as given in Article 13.

In the domain of Legislation our constitution bears some similarity with the English Constitution. It is no doubt true that our parliament cannot claim as extensive a power as is enjoyed by the British Parliament in view of the fact that it can not pass any law which affects the fundamental right of the citizens. The Union Parliament shall be competent to make any law with respect to any of the matters enumerated in the Union List. It shall also have exclusive power to make any law with respect to any matter not enumerated in the concurrent list or state list. Nevertheless the power of the Union Parliament is strictly restricted by statute and cannot encroach upon the legislative domain of the State Legislature. Again, the Union Legislature cannot make any law touching the fundamental rights and if it does so the acts made by it will be void to the extent of their repugnancy to the provisions of the constitution relating to those fundamental rights. The British Parliament finds no such restriction in the exercise of its legislative power.

Like the British House of Commons our House of people has been given a wider range of power in the matter of Legislation and can exercise effective control over the financial sphere. A Money Bill must be introduced in the House of People. After

it has been passed the House of People it shall be transmitted to the Council of State which will be competent to send back the Bill within fourteen days from the date of the receipt of the Bill. The House of People may either accept or reject the recommendation and in the latter case the Bill will be deemed to have been passed by both the Houses in the form in which it was passed by the House of People. Demands for grants in regard to expenditures not charged upon the consolidated fund shall be voted upon by the House of People. In the State Legislature the power of the Lower House—the Legislative Assembly—is more extensive than that of the Legislative Council where it exists. It has complete jurisdiction over money Bills which can not be introduced in the Legislative Council. The Legislative Council can send its recommendation to the Legislative Assembly but the latter is not bound to follow the recommendations. In regard to other Bills the Bills passed by the Legislative Assembly must be transmitted to the Legislative Council ; if the Bill so transmitted stands rejected by the Council or if more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it or if the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree the Legislative Assembly may again pass the Bill in the same or in any subsequent session and may again transmit the Bill to the Legislative Council. If the Bill is again rejected by the Legislative Council or if more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it or if the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree the Bill shall be deemed to have been passed in the form in which it was passed by the Legislative Assembly for the second time.

All the above provisions are akin to those for suspensive veto of the House of Lords in regard to the passing of Public Bills. In regard to Money Bills the Council of State of the Union Parliament and the Legislative Council of the State Legislature occupy the same position as that occupied by the House of Lords which has no voice in respect of those Bills.

In the executive sphere we find certain points of similarity between the Indian Cabinet and the English Cabinet. The system of responsible government in India has been introduced in imitation of the British model. Our Cabinet Ministers will remain in office so long as they can command the confidence of the House of people in the same way as the Cabinet Ministers remain in office so long as they command a majority in the House of Commons. It should be remembered in this connection that

the responsible. Government of India is the creation of the constitution which provides for such responsibility while in Great Britain it is a matter of convention. The statutory provision for such responsibility of the executive to the Legislature is to be found in the new French Constitution as well as in the Irish Constitution.

Prime Minister in the Indian union occupies the key position in the sphere of administration like that of the Prime Minister in Great Britain. The British Prime Minister is chosen by the king but his choice must fall on the leader of the party in power. This is the convention in Great Britain. In India the president must choose the Prime Minister but the constitution is silent as to the mode of his choice. A convention must grow in India and compel the president to choose the leader of the party in power in order to keep the constitutional machinery working. Other ministers must be chosen in accordance with the instruction of the Prime Minister.

The prime minister in India will influence the activities of the president and may advise him to follow the policy of administration enunciated by him. Although the position of our president is more than that of a figurehead our president cannot ignore the opinion of the prime minister in the discharge of his allotted functions. If he chooses to do so the responsible form of Government as envisaged by the new constitution of India will be a myth.

Again, the collective responsibility of the cabinet of the union will mean that the ministers will stand or fall together. If any particular minister fails to win the support of the majority in the house of people he should resign and along with him the entire cabinet will resign. This responsibility has not been defined in the Indian constitution and we do not know whether the British practice of allowing a minister to vote against the government will be followed by the Indian cabinet.

The privileges of the members of the union parliament and the prerogatives of the president are similar to those of the members of the House of Commons and the king of Great Britain.

The Judiciary in India is constituted an independent way and great caution has been taken to ensure its independence. Like the British judiciary the judges of the supreme court owes their appointment to the executive but they cannot be removed from office at the sweet will of the executive. They can be removed by the president only after an address to that effect supported by

two-thirds of the members of each House has been presented to the president demanding their removal on the ground of proved misbehaviour or incapacity.

As regards the power of the judiciary we find that our supreme court has been associated with greater powers than the judiciary of Great Britain. The sovereignty of the parliament does not allow the British judiciary to pronounce judgment upon the validity or constitutionality of the laws passed by the parliament. In India the supreme court has been authorised by the constitution to pronounce judgment upon the validity of the law when the union parliament or the state legislature transgresses beyond its ambit or make any law touching the fundamental rights of the citizens.

Like the British judiciary our courts have been empowered to issue writs in the nature of habeas corpus, mandamus and other writs for the enforcement of the fundamental rights. In regard to other matters such prerogative writs can be issued by the supreme court only when the parliament has empowered it to do so.

The intimacy between the judiciary and the legislature has been maintained by giving the union parliament some voice in the matter of removal of the judges; but this intimacy has not in any way impaired their independence in view of the provision which lays down that the privileges or allowances of a judge or his rights in respect of leave of absence or pension shall not be varied to his disadvantage after his appointment. Again no discussion shall take place in the legislature of a state with respect to the conduct of any judge of the supreme court or of a High Court in the discharge of his duties.

Again, every Governor of a state has been directed by the constitution to reserve a bill passed by the House or Houses of the state legislature for the consideration of the president when the bill is of such a nature that it would, if it became law, so derogate from the power of the High Court as to endanger the position which such court is by the new constitution designed to fill.

The judiciary in India forms a hierarchy with a supreme court at the helm. Like the federal judiciary the supreme court does not find its jurisdiction limited over certain specified matters. It has been empowered to hear appeals from the state courts and exercise control over the entire judicial administration. The law declared by the supreme court shall be binding upon all courts within the territory of India.

2. The Indian Constitution as compared with the American Constitution.

The Indian constitution is essentially federal in structure but unitary in spirit. Like the United States of America the Indian Republic is a union of a number of states. These states however do not enjoy an equality of status. They have been classified under three groups and are entitled to send unequal number of representatives in the council states.

As in every federal system we find in the Indian constitution a division of subjects of administration between the union and the states. This we find in the seventh schedule annexed to the constitution; but additional complexity has been created by the incorporation of the concurrent list which does not find place in the American constitution and militates against the true principle of federation.

Again, the constitution of India in its attempt to build up a strong centre has forgotten the fundamental principle of federation. It has provided that in regard to concurrent subjects the law made by the union parliament shall prevail over state law on the same subject. In the domain of the state legislature the union legislature has been empowered to legislate for the promotion of national interest when the council of states makes a declaration as to the necessity of such legislation. The union parliament has been empowered by the constitution to make laws for the whole or any part of the territory of India with respect to any matter enumerated in the state list so long as the proclamation of emergency is in operation. In this way an attempt has been made to ensure central control over the federated units.

Other peculiarities of the Indian constitution are the provisions for uniformity of organisation in all basic matters for the sake of consolidation of the union. We find here a single citizenship instead of dual citizenship which is to be found in a federal type of organisation. There is also a single integrated judiciary with the supreme court at the top. We also find in the Indian constitution provisions for special all-India services common to the union and the states.

The states of the Indian union have no right to secede from the union or to frame their own constitution. Unlike the American union the union of India possesses the residuary power.

The constitution of India does not admit of rigidity which characterizes the American constitution. The Indian constitution can be amended by the union parliament but certain special conditions are to be fulfilled before the constitution can be

amended. One such condition is that the bill must be supported by a majority of the total members of each House as well as by a majority of not less than two-thirds of the members of each House present and voting. Again, amendments relating to certain articles and certain chapters of the constitution and those relating to lists in the seventh schedule, the representation of states in the parliament and the article dealing with the amendment of the constitution must be ratified by legislatures of not less than one-half of the states specified in parts A and B of the first schedule before the amendment can be presented to the president for assent.

The Indian Constitution is both unitary and Federal as the circumstances require. In times of emergency the whole union comes under the unified control of the Union Government.

The organisations of the Executive, the Legislature and the Judiciary differ substantially from those of the American Federation. In U.S.A. the President of the Union is the real executive head owing no responsibility to the Legislature. The Constitution of U.S.A. provides for the election of the President through the electoral college composed of as many electors from each component states as the state has members in the Congress. At present the President is elected in a direct way and on party lines. In India the President of the Union shall be elected by an electoral college consisting of the elected members of the Union Legislature and the Legislative Assemblies of the various states in accordance with the principle of proportional representation by means of single transferable vote. The votes at such election shall be weighed in such a way as to make the total voting strength of the Union Legislature equal to that of the Legislative Assemblies of all the States taken together. This mode of election is open to objection on the ground of complexity. It will ensure a close relationship between the executive and the Legislature.

The Vice-President of the Union will be the ex-officio Chairman of the Upper House of the Union Legislature. This is in imitation of the practice prevalent in U.S.A. The position of the President of the U.S.A. differs substantially from that of the President of the Indian Union. The former is the real head and the Cabinet Ministers have got to obey his directions while the latter although associated with a wide range of statutory powers have to exercise these powers on the advice of the Ministry which will be held responsible to the Lower House of Parliament. The President of the Indian Union stands between the American President and the French President and we are not wrong if we say that his position is similar to that of the French President.

It should be noted in this connection that the President of the Indian Union will not be legally bound to follow the advice of the Council of Ministers but a convention must grow in India and compel the President to follow the advice of the Council of Ministers. In the absence of such convention the present constitution will surely fail to maintain the responsible form of Government as envisaged therein. The real executive in India will therefore be the Prime Minister who must in all probability be the Leader of the most powerful party which can maintain an effective majority in the Lower House.

The President of the Union of India may be removed by means of impeachment. The President of U.S.A. may also be impeached. The mode of impeachment is not the same. The President of U.S.A. can be impeached by the Senate while the President of the Indian Union may be impeached by either House of the Union Parliament.

The form of the Executive Government in U.S.A. is of the Presidential type while in India we have a Parliamentary type of Government ; such being the case the Cabinet of the Indian Union will necessarily get an opportunity of initiating legislative measures. The Executive in the Indian Union is expected to co-operate fully with the Legislature and this harmonious relation will bring immense good to the people. The position is otherwise in U.S.A. where the members of the Legislature are not allowed to participate in the election of the President. In U.S.A. we find unhealthy friction between the Executive and the Legislature and this sometimes leads to constitutional deadlock. In the Indian Union the present organisations of the Legislature and the Executive are expected to work in harmony.

The President in U.S.A. enjoys a veto power but this veto power is a qualified one and becomes ineffective when the bill vetoed by the President is reconsidered by both the Houses and passed by a majority of the two-thirds of the members of each House. Again, when the President of U.S.A. does not veto a bill but fails to return the same within ten days after the receipt thereof the bill becomes an act after the expiry of ten days. In the Union of India the power of the President to veto a bill is absolute. It is only when the President chooses to return a bill other than a money Bill for reconsideration and the Houses pass the said Bill again after reconsideration that the President is debarred from vetoing the Bill.

The Senate of U.S.A. is more powerful than the Council of States of the Indian Union. Like the Council of States the Senate cannot introduce money Bills but in regard to other Bills the

exercised in view of the fact that our President will be guided by the advice of the Council of Ministers who will presumably command the confidence of the Legislature.

The Council of Ministers in the Indian Union are collectively responsible to the Lower House while the French Ministry is responsible to both Houses of the Legislature. The Ministers of the French Ministry, again, are individually responsible for their respective action. Again a member of the French Ministry is not required to be a member of either House of the Legislature.

The Legislature of France maintains a second Chamber known as the Council of Republic but unlike the Council of States of the Indian Union this Council of Republic acts merely as an advisory body without any power of vetoing bills. The National Assembly has for all practical purposes the sole power of making laws. It can reject the amendment made by the Council of Republic. It can make and unmake the Ministers and can impeach both the President and the Ministers. Hence we find that the National Assembly is more powerful than the House of People.

The judicial administration of France differs substantially from that of the Indian Union. In the Indian Constitution the judicial administration represents a hierarchy with the Supreme Court at the helm. In France too we find no such uniformity of control. The French system provides for separate organisation for the trial of offences committed by the executive in the discharge of official duties. This separate organisation is unknown to the Indian Constitution.

The Judges in France are appointed by the President on the advice of the Supreme Magisterial Council consisting of representatives of the Legislature, the executive, the Judiciary and the Legal profession. Hence the judges so appointed are expected to work in harmony with the Executive and the Legislature. In the Indian Union the judges of the Supreme Court are appointed by the President after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose. The Judges of the Supreme Court can be removed by the President only after an address of the Legislature. In France the Legislature has no voice in the removal of the Judges.

5. On Fundamental Rights.

Like many other written constitutions the Indian Constitution gives out an elaborate declaration of fundamental rights and equips the Supreme Court with relevant writs for the enforcement

of these rights. These fundamental rights include the following—(a) Right to equality, (b) Right to freedom, (c) Right against exploitation, (d) Right to freedom of Religion, (e) Right to property, and (f) Right to Constitutional Remedies.

These fundamental rights are not however absolute.

Right to freedom is a very important right for free people ; but this right in the matter of speech, association and movement has been qualified by restrictions contained in any existing law or to be contained in any future law relating to libel, slander, defamation, contempt of Court or any matter which undermines the security of or tends to overthrow the State. The fundamental rights are therefore to be exercised subject to these restrictions imposed by law and ultimately depend upon the nature of laws which curtail these rights. The Legislature of the Union and of the States will be competent to enact any law in curtailment of these fundamental rights on the ground of decency, morality or security of the State. The Legislature may impose reasonable restrictions on the free assembly in the interest of public order. The expression "reasonable restriction" is wide enough to encourage legislation in substantial curtailment of the fundamental rights and may authorise the Legislatures to prevent even honest and bonafide criticisms of governmental policies and activities. The solemn right to life or personal liberty has been severely restricted in view of the provision of article 21 which states that no person shall be deprived of his life or personal liberty except by a procedure established by law. This means that if the procedure is legal or authorised by law the Court cannot go behind the procedure and examine the substantive law. If the Legislature prescribes a procedure for arrest and detention the Court has merely to see whether the legal procedure has been strictly followed and nothing more. In this way the law in restriction of personal liberty will fall outside the authority of the Judiciary which will thus be made to submit to the supremacy of the Legislature in this respect.

In regard to freedom of Religion the Constitution recognises the freedom of conscience and the freedom of any person to profess any religion he likes. This right, again, has been qualified by authorising the State to make any law with a view to regulating or restricting any economic, financial, political or other secular activity which may be associated with such religious practice. This means substantial encroachment on the right of any religious body, particularly the Hindu Religious Institutions from protecting their rights by making political agitations. Again, in the absence of provision in restriction of the activity of the muhamedan religion we find no justification for regulating the

Hindu Religion. It is better that every religion should have free scope for development and the State should not interfere in religious matter. Again, restrictions on religious instruction will stand in the way of cultural progress of the people.

The provisions as to preventive detention authorises the Union Parliament to prescribe the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention. The said Parliament has also been authorised to define the circumstances under which and the class or classes of cases in which a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of his Advisory Board. This authority of the Parliament may be abused under unjustifiable circumstances so as to impede the right of person and freedom of the citizens.

The Right to property is qualified by the authority of law which may authorise acquisition for public purposes after making provision for payment of compensation. The aggrieved party has no right to question the adequacy or inadequacy of the compensation nor has the Court been given any discretion in the matter. The authority of law in this connection is unqualified and may go so far as to acquire property on which temple may stand and thus touch the religious sentiment of the people which was respected even under the British Rule.

One outstanding fact that deserves notice in this connection is the provision for constitutional remedies which finds place in the New constitution. Article 32 recognises the right of the Supreme Court to issue direction, orders or writs such as *Habeas Corpus*, mandamus, prohibition, quo warranto and certiorari in enforcement of the fundamental rights. Other courts may be empowered by the Union Parliament to exercise similar powers without affecting the constitutional power of the Supreme Court in this connection.

The right to issue the writs of Habeas which may be regarded as a bulwark of the Rule of Law is a constitutional right enjoyable by the Supreme Court alone unless a new law has been made by the Union Parliament to authorise the other courts to exercise this right within their jurisdiction. Until these other courts have been so authorised the aggrieved party has to run to the Supreme Court situated at Delhi to remove his encroachment on right of person and freedom. This is indeed an expensive remedy which very few persons will be in a position to avail of.

It is pleasing to note in this connection that the High Courts of all States have been associated with these solemn rights of

issuing writs of habeas corpus and other writs in enforcement of the fundamental rights and for other purposes notwithstanding the provision for the exercise of these rights by the Supreme Court. It is therefore clear that the Privy Council decision which so long restricted the issue of prerogative writs of the habeas corpus in matters contemplated by section 491 of the Code of Criminal Procedure of 1898 is no longer good law.

During the proclamation of emergency all the above fundamental rights will remain suspended. This is justified because the security of the State is the primary concern of every State. Again, the suspension of fundamental rights is urgently called for in times of crisis when anti-national elements may acquire new strength to destroy the solidarity of the Union and personal liberty. We should care to note in this connection that the British Parliament or the American Congress also can suspend the writ of habeas corpus. The constitutional provision for suspension of rights in emergent circumstances is thus justified ; but the question is whether the proclamation of emergency which touches this fundamental rights should be left to the discretion of the President alone. If the said President acts arbitrarily and independently of the advice of the Ministry the fundamental rights of the citizens may be in jeopardy at his sweet will and pleasure. It should be remembered that even in America the President has not been associated with such right. Our President has been given higher power than the American President in this respect. The bitter experience of associating the President of the German Reich with this absolute power of abrogating fundamental rights should not be lost sight of and our constitutional authors should not repeat the same mistake over again.

6. On Directive principles.

The new constitution of India embodies certain directive principles which should be followed by the ruling authorities in administering the country on democratic lines. These principles exhibit high and noble ideals but they remain as so many pious wishes of the authors of the constitution. These principles may be regarded as so many instructions which should regulate the activity of the persons entrusted with the responsibility of government. Nevertheless they have no obligatory force in view of the fact that they are not enforceable in courts.

7. On the powers of the President.

The President of the Union has been associated with a wide range of powers executive, legislative, judicial, financial and emergent. It may be argued that these powers are nominal and

must by convention be exercised on the advice of the Council of Ministers who are held responsible to the Legislature. This convention has not found time to grow. If the President happens to be a man of strong personality he may venture to use his own discretion and ignore the advice of the Council of Ministers. Under such circumstances the administration will be carried on by the President on his own responsibility and the Parliamentary form of government as envisaged by the constitution will come to an end. Again, the President has been given absolute freedom in the choice of the Prime Ministers. He is not bound to appoint the Leader of the party in power. He is to do so by convention which has not yet grown. It may so happen that the Prime Minister and his colleagues blindly follow the direction of the President and the support of the members of the House of People is obtained by threats of dissolution. Under such circumstances the Parliamentary system of government will be a nominal one and the democracy will practically yield to the dictatorship of the President. Even the American President has got to consult the will of the Senate in serious matters of administration but our President has been empowered to declare war and conclude peace without any reference to the Legislature.

The powers of the President during the proclamation of emergency are totalitarian in character. Theoretically speaking he is not bound to follow the advice of the Council of Ministers in the exercise of his emergent powers which involve the suspension of fundamental rights of citizens and the assumption of complete control over the affairs of the States. Again, the new constitution authorises the President to issue a proclamation of failure of constitutional machinery in regard to a State whenever the latter fails to comply with the direction of the Union Government. This is indeed a drastic measure and tells upon the autonomy of the State.

The power of the President of issuing a proclamation whenever he is of opinion that the financial stability or credit of India is threatened is also very drastic. He may while such proclamations of financial emergency are in force issue directions to the component States to observe such canons of financial propriety as he deems proper, to reduce the salaries of State officers and to require that every money bill of every State shall be reserved for his consideration. He may also reduce the salaries of officers serving the Union including the judges of the Supreme Court and High Courts.

It should be noted in this connection that even the American President does not enjoy such far-reaching power.

8. On the Union Cabinet.

In the Constitution of India provision has been made for a Council of Ministers with the Prime Minister at the head. This Council of Ministers shall have the constitutional right of aiding and advising the President in the exercise of his functions. This Council of Ministers shall be collectively responsible to the House of People. The minister, again holds his office during the pleasure of the President and can not remain in office for more than six months unless he can procure a seat in either House of the Legislature. These ministers, again, owe their appointment to the President. There are material provisions relating to the formation and functions of the Cabinet or the Council of Ministers.

The formation of the Council of Ministers has been left to the discretion of the President. It is expected that he would choose the Prime Minister and other ministers in such a manner as to ensure the responsibility of the Cabinet to the Lower House. In that case his choice will evidently fall on the Leader of the Party in power. If there are more than two parties and none of them possesses absolute majority he may choose the leader of the party whose policy and programme convince him. This Prime Minister and his colleagues owe their appointment to the President who is again empowered to allocate governmental business among them. They hold office during his pleasure. All these provisions go to bring the Council of Ministers completely under the control of the President. In a Parliamentary form of government it is sufficient that the ministers remain responsible to the Lower House. To compel these Cabinet ministers to hold office during the pleasure of the Executive Head who owes no responsibility to the Legislature is to reduce their strength and make them dependent upon the whims and caprices of that head.

Again, if a true responsible government is to be ushered in it is desirable that article 74 should be remodelled so as to make it obligatory upon the President to be guided by the aid and advice of the Council of Ministers and to dissolve the House of People at the request of the Prime Minister. It is not safe for the Indian Union which is just beginning its independent career to leave many vital things to conventions which have not yet found time to grow.

One thing that deserves elucidation in this connection is the principle of collective responsibility of the Council of Ministers. This collective responsibility indicates that the whole Council or Cabinet stands or falls together. If the policy of a particular minister fails to command support the entire Cabinet must resign. Again, every decision of the Cabinet must exhibit an unqualified

support of the entire body of Cabinet Ministers. There should be no dissentient voice. It is no doubt true that the principle of collective responsibility has a different meaning in Great Britain where the ministers are allowed to speak or vote on matters of administration as they like ; but this practice should not be followed in India because it encourages breach in the Cabinet.

The provision for collective responsibility should be associated with individual responsibility of the ministers for error of judgment or mal-administration. Unless this is done it will be difficult to bring a particular minister to book for mal-practices. To hold the entire Cabinet responsible for the mal-administration of a particular minister will mean a serious thing for the Cabinet.

Again, there is provision that a minister must vacate his seat if he ceases to be a member of either House of Parliament for a consecutive period of six months. This provision does not necessarily mean that the minister must be an elected member of the Legislature. We all know that the President has a right to nominate a number of persons to the Council of States and it may so happen that the President's choice may fall on such nominated members. He may even dismiss the nominated members at his sweet will and pleasure and fill up the vacancy by minister or ministers chosen by him. In this way the Cabinet may come to consist of persons who are not representatives of the people and in that case the principle of responsible government will be a myth. It is therefore desirable that the constitution should provide that ministers chosen by the President must get themselves elected as members of either House within six months after their appointment.

9. On the Sovereignty of the Union Parliament.

The Union Parliament is a Sovereign Legislature in the sense that it is independent of external control. The British Parliament has ceased to have any voice in the legislation of India. The Union Parliament knows no outside control over its legislative activity. Unlike the British Parliament the Union Parliament has got a limited jurisdiction in the sphere of legislation. Its legislative activity must be exercised in a manner which does not affect the jurisdiction of the States. It has no doubt been associated with residuary powers of legislation. This distribution of powers is consistent with federal principle which must demarcate the respective jurisdiction of the Union and of the States.

The Union Legislature must strictly follow the line of demarcation and as in every other Federal system its legislative activity has been subjected to judicial review. The Supreme Court of

India will be competent to examine the laws made by the Union Legislature in the light of constitutional provisions and to declare any act of the Union Parliament unconstitutional and void on the ground that the same act violates the provisions of constitution. This authority of the Supreme Court in a way checks the legislative activity of the Union Parliament. In England the acts of the British Parliament cannot be reviewed by the Judiciary which must give effect to any law made by the British Parliament.

10. Council of States as compared with the House of Lords and the Senate of U. S. A.

The Council of States is the Upper House of the Union Parliament and contains representatives of the component States and certain nominated members. In the House of Lords the members generally hold hereditary offices. In U. S. A. the Congress consists of representatives of the States in equal numbers.

Like the Senate of U. S. A. one-third of the members of the Council of States shall retire on the expiration of every second year. Again, the Vice-President of the Indian Union shall act as an ex-officio chairman of the Council of States in the same way the Vice-President of U. S. A. becomes the ex-officio chairman of the Senate.

In respect of position and powers the Council of States holds a position inferior to that of the House of People. It no doubt enjoys co-equal power with the House of People in the initiation and passing of ordinary bills. In the matter of finance the Council of States has only limited power. It can not initiate Money Bills. After a Money Bill has been passed by the House of People it must be transmitted to the Council of State which shall return the Bill with its recommendation within fourteen days from the date of the receipt of the Bill. These recommendations may or may not be accepted by the House of People. If the Money Bill transmitted to the Upper House is not returned within the aforesaid fourteen days the Bill shall be deemed to have been passed in its original form by the House of People. We thus find that the Council of States has no effective voice in the financial legislation. It can postpone the Bill for a period of fourteen days.

This inferior position of the Council of States in respect of financial legislation can be favourably compared with that occupied by the House of Lords in the matter of Finance. The latter House can delay the financial bill for period of one month and cannot even amend the Bill. In the sphere of ordinary legislation the House of Lords can only defer the passing of law for two years under the Parliamentary Act of 1911. Our Council of States

however occupies a better position in this respect in as much as it enjoys co-ordinate power with the House of People in the sphere ordinary legislation.

The council of states of the Indian union when compared with the American senate exhibits the following points of difference. In the sphere of ordinary legislature the second chamber of both the unions enjoy equal power. In the sphere of financial legislation the Senate of U.S.A. enjoys greater power than the council of states of the Indian union in as much the former can initiate bills relating to expenditure of money and can amend bills for raising revenue which must originate in the House of Representatives.

To arrive at a compromise the constitution of India makes provision for joint sitting of the two Houses and the points at issue are decided by a majority of the members present and voting. As the lower House is numerically stronger than the upper House the opinion of the former will naturally predominate at the joint sitting. In U.S.A. a disagreement between the two Houses of the Congress may be bridged by means of conference committee which is composed of small groups of legislatures of each House and the predominance normally depends upon the bargaining power of a particular group.

The Senate of U.S.A. is more powerful than the council of state because of many non-legislative powers which the constitution authorises the former to exercise.

11. The State Governments : Their Constitutional Status.

The underlying spirit of the constitution is to secure a responsible government in the component states of the union. The state list contains a number of subjects over which the state legislature will be competent to legislate and the executive power of a state shall extend to all such matters. In regard to matters enumerated in the concurrent list the executive power of a state shall be subject to and limited by the executive power expressly conferred by the constitution or by any law made by parliament upon the union or the authorities thereof. This provision proves in clear terms the control which the union legislature will have over the executive of the state.

The Governor of a state shall be appointed by the president. He is not a representative of the people like the Governor of a state of America who is elected directly by the people. The draft constitution made provision for an elected Governor but this idea of electing the Governor was abandoned by the authors of

our constitution so that he may act as a constitutional figurehead and serve the state in accordance with the advice of the council of ministers who shall be held responsible to the elected representatives of the people in the legislature. His position is like that of a Canadian Lieutenant Governor.

In the Indian constitution we find that the Governor has been associated with many powers executive, legislative, financial and judicial. In the exercise of these powers the Governor should follow the advice of the council of ministers in order to maintain the principle of responsible government envisaged by the constitution, but the constitution does not lay down any specific direction to that effect. Hence our governors have got to follow the convention which prevails in Canada and regulates the activities of lieutenant governors there. If our governors behaves otherwise he will fail to form the council of ministers as provided for by the constitution. Again, he will not be in a position to secure funds required for administering the states. Nevertheless it is desirable that the constitution should make certain specific provisions which will make it obligatory on the Governors to abide by the decision of the cabinet. Again, the constitution has given the Governor of Assam certain discretionary power. The existence of such discretionary power is not consistent with cabinet responsibility. This unhappy state of things should be removed.

12. The State Legislatures.

The state legislatures have been given a definite domain for their legislative activity. The state list contains the subjects in regard to which the state legislatures are competent to legislate. Within the ambit of their legislative powers the state legislatures do not enjoy sovereign power. They have no authority to amend the constitution of the states. Certain laws must be reserved for the consideration of the President. These include laws relating to concurrent subjects when these laws are repugnant to any earlier law made by the union parliament and laws providing for the imposition of taxes on the sale or purchase of commodities declared by parliament to be essential for the life of the community. Again, certain bills which purport to impose restriction on the freedom trade cannot be introduced without the previous sanction of the president.

The council of states may by resolution declare that certain matters should be regulated by parliamentary regulations. The union parliament during the proclamation of emergency or failure of constitutional machinery shall be competent to make laws on state subjects.

The Lower House of the state legislature occupies a pre-eminent position in the legislature. The Upper House where it exists has practically no power in the matter of finance. A finance bill may be delayed by the Legislative Council for a period of fourteen days. Its recommendation may not be accepted by the Lower House. In the sphere of ordinary legislation we find that the second chamber can postpone the passing of a bill for at least four months. A bill which has been passed by the Legislative Assembly is to be transmitted to the Legislative Council. If the said council rejects the bill or does not pass the said bill within three months the Legislative Assembly may again pass the Bill and transmit the same to the Legislative Council and if the latter rejects the bill or does not pass the Bill within one month the Bill shall be deemed to have been passed by the State Legislature. We thus find that the Upper House can merely delay the passing of the Bill.

13. States included in Part B as Compared with those in Part A.

The Native States of India which formerly were under the Suzerainty of His Majesty were given the option joining one or other of the two Dominions :—The Indian Union and Pakistan. Accordingly many of the Indian States agreed to join the Indian Union. The names of these States find place in Part B and Part C of the First Schedule. Part B contains the following States : (1) Hyderabad, (2) Jammu and Kashmir, (3) Madhya Bharat, (4) Mysore, (5) Patiala and East Punjab States Union, (6) Rajasthan, (7) Sourashtra, (8) Travancore—Cochin, (9) Vindhya Pradesh.

These States are governed by the Indian Constitution and maintain executive, legislative and judicial organisations which are almost identical in form with those prescribed for States included in Part A. The executive Head of the States included in Part B will be known as the Rajpramukh. The Rajpramukh of each State will be the person who is recognised as such by the President of the Union. The Parliamentary form of Government has been introduced in these states with the result that there has been transfer of power from the ruler to the people.

The State of Mysore has a bicameral Legislature and other States have unicameral legislature.

The Judiciary has been organised in the same way as the Judiciary of States included in Part A with this difference that the salaries of the High Court Judges in States included in Part B shall be fixed by the President in consultation with Rajpramukh.

These States will bear the same relation with the centre as has been prescribed for states included in Part B with this modification in the case of State of Jammu and Kashmir in regard to which the power of the Union Parliament shall be confined to those matters in the Union List as well as in the concurrent List as were given to the Centre by the Instrument of Accession and such other matters as the President may specify with the concurrence of the State Government.

These States shall bear an administrative relation with the Centre and this relation may go to extend the general control of the Union over these States for a period of ten years from the Commencement of the Constitution.

These States will enter into special financial agreements with the Centre and these agreements shall remain in force for a period not exceeding ten years from the Commencement of the Constitution.
